

# A Compilation of Major Laws of People's Republic of China

Edited

by

Xingan Li

School of Governance, Law and Society

Tallinn University

Estonia

Helsinki, Finland

2017



## Disclaimer

This compilation is intended to present selected major laws of the People's Republic of China (PRC), as they are potentially covered in the university course "Chinese Legal System". As it is understandable that all the effective official nation-wide laws and regulations of the PRC are made in Chinese, the official language of the PRC, any translation into other languages can be regarded as unofficial, even if the translation can be done by certain persons in official posts or publicized by official agencies. Therefore, this compilation of laws of the PRC in English does not bear any effectiveness if the reader may seek advices from any pieces of the law, ever though these texts can be supplementary to understand the original Chinese version.

On development of the course "Chinese Legal System" was not imposed any limitation to certain textbook nor any compulsory materials designated other than the lecturer. This granted the lecturer great discretion to design the structure, content, and weights of different parts of the lectures. To cope with the interest of this course, is the primary intention of this compilation, which is presented to help understand the lectures, but by no means covers laws and regulations for multi-dimensional use, neither for daily life nor for business.

The publishing of this compilation does not constitute the rendering of legal advice in any field of law of the People's Republic of China.

XL

Helsinki, Finland

1 March 2017

## Table of Contents

Constitution of the People's Republic of China .....	- 6 -
Law of the People's Republic of China on Regional National Autonomy .....	- 34 -
Anti-Secession Law .....	- 47 -
State Security Law of the People's Republic of China .....	- 49 -
Legislation Law of the People's Republic of China .....	- 55 -
General Principles of the Civil Law of the People's Republic of China .....	- 74 -
Property Law of the People's Republic of China .....	- 98 -
Trademark Law of the People's Republic of China .....	- 134 -
Patent Law of the People's Republic of China .....	- 147 -
Copyright Law of People's Republic of China .....	- 160 -
Guaranty Law of the People's Republic of China.....	- 176 -
Law of the People's Republic of China on Securities.....	- 192 -
Maritime Code of the People's Republic of China.....	- 240 -
Law of the People's Republic of China on Bid Invitation and Bidding.....	- 288 -
Tort Liability Law of the People's Republic of China .....	- 301 -
Companies Law of the People's Republic of China.....	- 313 -
Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People.....	- 359 -
Law of the People's Republic of China on Township Enterprises.....	- 371 -
Law of the People's Republic of China on Specialized Farmers Cooperatives .....	- 379 -
Insurance Law of the People's Republic of China.....	- 391 -
Enterprise Bankruptcy Law of the People's Republic of China.....	- 426 -
Contract Law of the People's Republic of China.....	- 453 -
Law of the People's Republic of China on Negotiable Instruments .....	- 507 -
Marriage Law of the People's Republic of China.....	- 524 -
Adoption Law of the People's Republic of China.....	- 533 -
Law of Succession of the People's Republic of China .....	- 539 -
Labour Law of the People's Republic of China .....	- 546 -
Labor Contract Law of the People's Republic of China .....	- 562 -
Law of the People's Republic of China on Labor-dispute Mediation and Arbitration.....	- 582 -
Law of the People's Republic of China on Penalties for Administration of Public Security .....	- 592 -
Law of the People's Republic of China on Administrative Supervision .....	- 617 -

Law of the People's Republic of China on Administrative Reconsideration .....	- 627 -
Administrative Permission Law of the People's Republic of China .....	- 639 -
Law of the People's Republic of China on State Compensation.....	- 658 -
Law of the People's Republic of China on Public Servants.....	- 667 -
Law of the People's Republic of China on Lawyers .....	- 689 -
Law on Licensed Doctors of the People's Republic of China .....	- 699 -
Judges Law of the People's Republic of China.....	- 709 -
Public Procurators Law of the People's Republic of China .....	- 721 -
Law of the People's Republic of China on the Control of the Exit and Entry of Citizens.....	- 734 -
Law of the People's Republic of China on Control of the Entry and Exit of Aliens.....	- 738 -
Customs Law of the People's Republic of China.....	- 744 -
Extradition Law of the People's Republic of China.....	- 766 -
Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures .....	- 778 -
Law of the People's Republic of China on Import and Export Commodity Inspection .....	- 783 -
Foreign Trade Law of the People's Republic of China .....	- 797 -
Law of the People's Republic of China on Foreign-Capital Enterprises.....	- 810 -
Law of the People's Republic of China on Prevention of Juvenile Delinquency.....	- 813 -
Criminal Law of the People's Republic of China .....	- 824 -
Prison Law of the People's Republic of China .....	- 923 -
Administrative Procedure Law of the People's Republic of China .....	- 936 -
Arbitration Law of the People's Republic of China.....	- 950 -
Civil Procedure Law of the People's Republic of China .....	- 962 -
Criminal Procedure Law of the People's Republic of China .....	- 1011 -
Special Maritime Procedure Law of the People's Republic of China.....	- 1052 -
Law of the People's Republic of China Against Unfair Competition .....	- 1073 -
Anti-monopoly Law of the People's Republic of China .....	- 1080 -
Law of the People's Republic of China on Product Quality .....	- 1093 -
Pricing Law of the People's Republic of China.....	- 1107 -
Law of the People's Republic of China on the People's Bank of China .....	- 1116 -
Law of the People's Republic of China on Commercial Banks.....	- 1125 -
Law of the People's Republic of China on Regulation of and Supervision over the Banking Industry.....	- 1143 -
Law of the People's Republic of China on Funds for Investment in Securities .....	- 1154 -

# Constitution of the People's Republic of China

Adopted at the Fifth Session of the Fifth National People's Congress and promulgated for implementation by the Announcement of the National People's Congress on December 4, 1982

Amended in accordance with the Amendments to the Constitution of the People's Republic of China adopted respectively at the First Session of the Seventh National People's Congress on April 12, 1988, the First Session of the Eighth National People's Congress on March 29, 1993, the Second Session of the Ninth National People's Congress on March 15, 1999 and the Second Session of the Tenth National People's Congress on March 14, 2004)

## Contents

### Preface

### Chapter I General Principle

### Chapter II The Fundamental Rights and Duties of Citizen

### Chapter III The Structure of the State

#### Section 1 National People's Congress

#### Section 2 The President of the People's Republic of China

#### Section 3 The State Council

#### Section 4 The Central Military Commission

#### Section 5 The Local People's Congress and Local People's Governments at Various Levels

#### Section 6 The Organs of Self-Government of National Autonomous Areas

#### Section 7 The People's Courts and the People's Procuratorates

### Chapter IV The National Flag, the National Anthem, the National Emblem, and the Capital

### Preface

China is a country with one of the longest histories in the world. The people of all of China's nationalities have jointly created a culture of grandeur and have a glorious revolutionary tradition. After 1840, feudal China was gradually turned into a semi-colonial and semi-feudal country. The Chinese people waged many successive heroic struggles for national independence and liberation and for democracy and freedom. Great and earthshaking historical changes have taken place in China in the 20th century. The Revolution of 1911, led by Dr. Sun Yat-sen, abolished the feudal monarchy and gave birth to the Republic of China. But the historic mission of the Chinese people to overthrow imperialism and feudalism remained unaccomplished. After waging protracted and arduous struggles, armed and otherwise, along a zigzag course, the Chinese people of all nationalities led by the Communist Party of China with Chairman Mao Zedong as its leader ultimately, in 1949, overthrew the rule of imperialism, feudalism and bureaucrat-capitalism, won a great victory in the New-Democratic Revolution and founded the People's Republic of China. Since then the Chinese people have taken control of state power and become masters of the country. After the founding of the People's Republic, China gradually achieved its transition from a New-Democratic to a socialist society. The socialist transformation of the private ownership of the means of production has been completed, the system of exploitation of man by man abolished and the socialist system established. The people's democratic dictatorship led by the working class and based on the alliance of workers and peasants, which is in essence the dictatorship of the proletariat, has been consolidated and developed. The Chinese people and the Chinese People's Liberation Army have defeated imperialist and hegemonist aggression, sabotage and armed provocations and have thereby safeguarded China's national independence and security and strengthened its national defence. Major successes have been achieved in economic development. An independent and relatively comprehensive socialist system of industry has basically been established. There has been a marked increase in agricultural production. Significant advances have been made in educational, scientific and cultural undertakings, while education in socialist ideology has produced noteworthy results. The life of the people has improved considerably. Both the victory in China's New-Democratic Revolution and the successes in its socialist cause have been achieved by the Chinese people of all nationalities, under the leadership of the Communist Party of China and guidance of Marxism-Leninism and Mao Zedong Thought, by upholding truth, correcting errors and surmounting numerous difficulties and hardships. China will be in the primary stage of socialism for a long time to come. The basic task of the nation is to concentrate its effort on socialist modernization along the socialist road with Chinese characteristics. Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory and the important thought of 'Three Represents', the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship and the socialist road, persevere in reform and opening to the outside world, steadily improve various socialist institutions, develop the socialist market economy, develop socialist democracy, improve the socialist legal system and work hard and self-dependently to modernize the country's industry, agriculture, national defense and science and technology step by step, and to promote the coordinated development of material civilization, political civilization and spiritual civilization to build China into a socialist country that is prosperous, powerful, democratic and culturally advanced. The exploiting classes as such have been abolished in our country. However, class struggle will continue to exist within certain bounds for a long time to come. The Chinese people must fight against those forces and elements, both at home and abroad, that are hostile to China's

socialist system and try to undermine it. Taiwan is part of the sacred territory of the People's Republic of China. It is the inviolable duty of all Chinese people, including our compatriots in Taiwan, to accomplish the great task of reunifying the motherland. In building socialism it is essential to rely on workers, peasants and intellectuals and to unite all forces that can be united. In the long years of revolution and construction, there has been formed under the leadership of the Communist Party of China a broad patriotic united front that is composed of democratic parties and people's organizations, embracing all socialist working people, builders of the socialist cause, all patriots who support socialism and all patriots who stand for reunification of the motherland. This united front will continue to be consolidated and developed. The Chinese People's Political Consultative Conference, a broadly based representative organization of the united front which has played a significant historical role, will play a still more important role in the country's political and social life, in promoting friendship with other countries and in the struggle for socialist modernization and for the reunification and unity of the country. The system of the multi-party cooperation and political consultation led by the Communist Party of China will exist and develop for a long time. The People's Republic of China is a unitary multi-national state created jointly by the people of all its nationalities. Socialist relations of equality, unity and mutual assistance have been established among the nationalities and will continue to be strengthened. In the struggle to safeguard the unity of the nationalities, it is necessary to combat big-nation chauvinism, mainly Han chauvinism, and to combat local national chauvinism. The state will do its utmost to promote the common prosperity of all the nationalities. China's achievements in revolution and construction are inseparable from the support of the people of the world. The future of China is closely linked to the future of the world. China consistently carries out an independent foreign policy and adheres to the five principles of mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence in developing diplomatic relations and economic and cultural exchanges with other countries. China consistently opposes imperialism, hegemonism and colonialism, works to strengthen unity with the people of other countries, supports the oppressed nations and the developing countries in their just struggle to win and preserve national independence and develop their national economies, and strives to safeguard world peace and promote the cause of human progress. This Constitution, in legal form, affirms the achievements of the struggles of the Chinese people of all nationalities and defines the basic system and basic tasks of the state; it is the fundamental law of the state and has supreme legal authority. The people of all nationalities, all state organs, the armed forces, all political parties and public organizations and all enterprises and institutions in the country must take the Constitution as the basic standard of conduct, and they have the duty to uphold the dignity of the Constitution and ensure its implementation.

## Chapter I General Principles

Article 1 The People's Republic of China is a socialist state under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants.



The socialist system is the basic system of the People's Republic of China. Disruption of the socialist system by any organization or individual is prohibited.

Article 2 All power in the People's Republic of China belongs to the people.

The National People's Congress and the local people's congresses at various levels are the organs through which the people exercise state power.

The people administer state affairs and manage economic, cultural and social affairs through various channels and in various ways in accordance with the law.

Article 3 The state organs of the People's Republic of China apply the principle of democratic centralism.

The National People's Congress and the local people's congresses at various levels are constituted through democratic elections. They are responsible to the people and subject to their supervision.

All administrative, judicial and procuratorial organs of the state are created by the people's congresses to which they are responsible and by which they are supervised.

The division of functions and powers between the central and local state organs is guided by the principle of giving full scope to the initiative and enthusiasm of the local authorities under the unified leadership of the central authorities.

Article 4 All nationalities in the People's Republic of China are equal. The state protects the lawful rights and interests of the minority nationalities and upholds and develops a relationship of equality, unity and mutual assistance among all of China's nationalities. Discrimination against and oppression of any nationality are prohibited; any act which undermines the unity of the nationalities or instigates division is prohibited.

The state assists areas inhabited by minority nationalities in accelerating their economic and cultural development according to the characteristics and needs of the various minority nationalities.

Regional autonomy is practiced in areas where people of minority nationalities live in concentrated communities; in these areas organs of self-government are established to exercise the power of autonomy. All national autonomous areas are integral parts of the People's Republic of China.

All nationalities have the freedom to use and develop their own spoken and written languages and to preserve or reform their own folkways and customs.

Article 5 The People's Republic of China practices ruling the country in accordance with the law and building a socialist country of law.

The state upholds the uniformity and dignity of the socialist legal system.

No laws or administrative or local rules and regulations may contravene the Constitution.

All state organs, the armed forces, all political parties and public organizations and all enterprises and institutions must abide by the Constitution and the law. All acts in violation of the Constitution or the law must be investigated.

No organization or individual is privileged to be beyond the Constitution or the law.

Article 6 The basis of the socialist economic system of the People's Republic of China is socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people. The system of socialist public ownership supersedes the system of exploitation of man by man; it applies the principle of "from each according to his ability, to each according to his work."

In the primary stage of socialism, the State upholds the basic economic system in which the public ownership is dominant and diverse forms of ownership develop side by side and keeps to the distribution system in which distribution according to work is dominant and diverse modes of distribution coexist

Article 7 The state-owned economy, namely, the socialist economy under ownership by the whole people, is the leading force in the national economy. The state ensures the consolidation and growth of the state-owned economy.

Article 8 Rural collective economic organizations implement a two-level management system characterized by the combination of centralized operation with decentralized operation on the basis of household contracted management. Other forms of cooperative economy in rural areas, such as producers', supply and marketing, credit and consumers' cooperatives, belong to the sector of socialist economy under collective ownership by the working people. Working people who are members of rural collective economic organizations have the right, within the limits prescribed by law, to farm plots of cropland and hilly land allotted for their private use, engage in household sideline production and raise privately-owned livestock.

The various forms of cooperative economy in the cities and towns, such as those in the handicraft, industrial, building, transport, commercial and service trades, all belong to the sector of socialist economy under collective ownership by the working people.

The state protects the lawful rights and interests of the urban and rural economic collectives and encourages, guides and helps the growth of the collective economy.

Article 9 All mineral resources, waters, forests, mountains, grasslands, unreclaimed land, beaches and other natural resources are owned by the state, that is, by the whole people, with the exception of the forests, mountains, grasslands, unreclaimed land and beaches that are owned by collectives in accordance with the law.

The state ensures the rational use of natural resources and protects rare animals and plants. Appropriation or damaging of natural resources by any organization or individual by whatever means is prohibited.

Article 10 Land in the cities is owned by the state.

Land in the rural and suburban areas is owned by collectives except for those portions which belong to the state in accordance with the law; house sites and privately farmed plots of cropland and hilly land are also owned by collectives.

The state may, for the public interest, expropriate or take over land for public use, and pay compensation in accordance with the law.

No organization or individual may appropriate, buy, sell or otherwise engage in the transfer of land by unlawful means. The rights to the use of land may be transferred according to law.

All organizations and individuals using land must ensure its rational use.

Article 11 The individual economy of urban and rural working people, operating within the limits prescribed by law, is a complement to the socialist public economy.

The state protects the lawful rights and interests of the non-public sectors of the economy, including individual and private sectors of the economy. The state encourages, supports and guides the development of the non-public sectors of the economy, and exercises supervision and control over the non-public sectors according to law.

The state permits the private sector of the economy to exist and develop within the limits prescribed by law. The private sector of the economy is a complement to the socialist public economy. The state protects the lawful rights and interests of the private sector of the economy, and exercises guidance, supervision and control over the private sector of the economy.

Article 12 Socialist public property is inviolable.

The state protects socialist public property. Appropriation or damaging of state or collective property by any organization or individual by whatever means is prohibited.

Article 13 The lawful private property of citizens may not be encroached upon.

The state protects by law the right of citizens to own private property and the right to inherit private property.

The state may, for the public interest, expropriate or take over private property of citizens for public use, and pay compensation in accordance with the law.

Article 14 The state continuously raises labour productivity, improves economic results and develops the productive forces by enhancing the enthusiasm of the working people, raising the level of their technical skill, disseminating advanced science and technology, improving the systems of economic administration and enterprise operation and management, instituting the socialist system of responsibility in various forms and improving the organization of work.

The state practises strict economy and combats waste.

The state properly apportions accumulation and consumption, concerns itself with the interests of the collective and the individual as well as of the state and, on the basis of expanded production, gradually improves the material and cultural life of the people.

The state establishes and improves the social security system fitting in with the level of economic development.

Article 15 The state practises socialist market economy.

The state strengthens economic legislation and improves macro-regulation and control.

The state prohibits in accordance with the law any organization or individual from disturbing the social-economic order.

Article 16 State-owned enterprises have decision-making power with regard to their operation within the limits prescribed by law.

State-owned enterprises practise democratic management through congresses of workers and staff and in other ways in accordance with the law.

Article 17 Collective economic organizations have decision-making power in conducting independent economic activities, on condition that they abide by the relevant laws.

Collective economic organizations practise democratic management in accordance with the law, elect or remove their managerial personnel and decide on major issues concerning operation and management.

Article 18 The People's Republic of China permits foreign enterprises, other foreign economic organizations and individual foreigners to invest in China and to enter into various forms of economic cooperation with Chinese enterprises and other Chinese economic organizations in accordance with the law of the People's Republic of China.

All foreign enterprises, other foreign economic organizations as well as Chinese-foreign joint ventures within Chinese territory shall abide by the law of the People's Republic of China. Their lawful rights and interests are protected by the law of the People's Republic of China.

Article 19 The state undertakes the development of socialist education and works to raise the scientific and cultural level of the whole nation.

The state establishes and administers schools of various types, universalizes compulsory primary education and promotes secondary, vocational and higher education as well as preschool education.

The state develops educational facilities in order to eliminate illiteracy and provide political, scientific, technical and professional education as well as general education for workers, peasants, state functionaries and other working people. It encourages people to become educated through independent study.

The state encourages the collective economic organizations, state enterprises and institutions and other sectors of society to establish educational institutions of various types in accordance with the law.

The state promotes the nationwide use of Putonghua (common speech based on Beijing pronunciation).

Article 20 The state promotes the development of the natural and social sciences, disseminates knowledge of science and technology, and commends and rewards achievements in scientific research as well as technological innovations and inventions.

Article 21 The state develops medical and health services, promotes modern medicine and traditional Chinese medicine, encourages and supports the setting up of various medical and health facilities by the rural economic collectives, state enterprises and institutions and neighborhood organizations, and promotes health and sanitation activities of a mass character, all for the protection of the people's health.

The state develops physical culture and promotes mass sports activities to improve the people's physical fitness.

Article 22 The state promotes the development of art and literature, the press, radio and television broadcasting, publishing and distribution services, libraries, museums, cultural centers and other cultural undertakings that serve the people and socialism, and it sponsors mass cultural activities.

The state protects sites of scenic and historical interest, valuable cultural monuments and relics and other significant items of China's historical and cultural heritage.

Article 23 The state trains specialized personnel in all fields who serve socialism, expands the ranks of intellectuals and creates conditions to give full scope to their role in socialist modernization.

Article 24 The state strengthens the building of a socialist society with an advanced culture and ideology by promoting education in high ideals, ethics, general knowledge, discipline and legality, and by promoting the formulation and observance of rules of conduct and common pledges by various sections of the people in urban and rural areas.

The state advocates the civic virtues of love of the motherland, of the people, of labour, of science and of socialism. It conducts education among the people in patriotism and collectivism, in internationalism and communism and in dialectical and historical materialism, to combat capitalist, feudal and other decadent ideas.

Article 25 The state promotes family planning so that population growth may fit the plans for economic and social development.

Article 26 The state protects and improves the environment in which people live and the ecological environment. It prevents and controls pollution and other public hazards.

The state organizes and encourages afforestation and the protection of forests.

Article 27 All state organs carry out the principle of simple and efficient administration, the system of responsibility for work and the system of training functionaries and appraising their performance in order to constantly improve the quality of work and efficiency and combat bureaucracy.

All state organs and functionaries must rely on the support of the people, keep in close touch with them, hear their opinions and suggestions, accept their supervision and do their best to serve them.

Article 28 The state maintains public order and suppresses treasonable and other criminal activities that endanger national security; it penalizes criminal activities that endanger public security and disrupt the socialist economy as well as other criminal activities; and it punishes and reforms criminals.

Article 29 The armed forces of the People's Republic of China belong to the people. Their tasks are to strengthen national defence, resist aggression, defend the motherland, safeguard the people's peaceful labour, participate in national reconstruction and do their best to serve the people.

The state strengthens the revolutionization, modernization and regularization of the armed forces in order to increase national defence capability.

Article 30 The administrative division of the People's Republic of China is as follows:

(1) The country is divided into provinces, autonomous regions and municipalities directly under the Central Government;

(2) Provinces and autonomous regions are divided into autonomous prefectures, counties, autonomous counties, and cities;

(3) Counties and autonomous counties are divided into townships, nationality townships, and towns.

Municipalities directly under the Central Government and other large cities are divided into districts and counties. Autonomous prefectures are divided into counties, autonomous counties, and cities.

All autonomous regions, autonomous prefectures and autonomous counties are national autonomous areas.

Article 31 The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in light of the specific conditions.

Article 32 The People's Republic of China protects the lawful rights and interests of foreigners within Chinese territory; foreigners on Chinese territory must abide by the laws of the People's Republic of China.

The People's Republic of China may grant asylum to foreigners who request it for political reasons.

## Chapter II The Fundamental Rights and Duties of Citizens

Article 33 All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China.

All citizens of the People's Republic of China are equal before the law.

The state respects and protects human rights.

Every citizen is entitled to the rights and at the same time must perform the duties prescribed by the Constitution and the law.

Article 34 All citizens of the People's Republic of China who have reached the age of 18 have the right to vote and stand for election, regardless of ethnic status, race, sex, occupation, family background, religious belief, education, property status or length of residence, except persons deprived of political rights according to law.

Article 35 Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.

Article 36 Citizens of the People's Republic of China enjoy freedom of religious belief.

No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion.

The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state.

Religious bodies and religious affairs are not subject to any foreign domination.

Article 37 Freedom of the person of citizens of the People's Republic of China is inviolable.

No citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrests must be made by a public security organ.

Unlawful detention or deprivation or restriction of citizens freedom of the person by other means is prohibited, and unlawful search of the person of citizens is prohibited.

Article 38 The personal dignity of citizens of the People's Republic of China is inviolable. Insult, libel, false accusation or false incrimination directed against citizens by any means is prohibited.

Article 39 The residences of citizens of the People's Republic of China are inviolable. Unlawful search of, or intrusion into, a citizen's residence is prohibited.

Article 40 Freedom and privacy of correspondence of citizens of the People's Republic of China are protected by law. No organization or individual may, on any ground, infringe upon citizens freedom and privacy of correspondence, except in cases where, to meet the needs of state security or of criminal investigation, public security or procuratorial organs are permitted to censor correspondence in accordance with procedures prescribed by law.

Article 41 Citizens of the People's Republic of China have the right to criticize and make suggestions regarding any state organ or functionary. Citizens have the right to make to relevant state organs complaints or charges against, or exposures of, any state organ or functionary for violation of the law or dereliction of duty; but fabrication or distortion of facts for purposes of libel or false incrimination is prohibited.

The state organ concerned must deal with complaints, charges or exposures made by citizens in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges and exposures or retaliate against the citizens making them.

Citizens who have suffered losses as a result of infringement of their civic rights by any state organ or functionary have the right to compensation in accordance with the law.

Article 42 Citizens of the People's Republic of China have the right as well as the duty to work.

Through various channels, the state creates conditions for employment, enhances occupational safety and health, improves working conditions and, on the basis of expanded production, increases remuneration for work and welfare benefits.

Work is a matter of honour for every citizen who is able to work. All working people in state-owned enterprises and in urban and rural economic collectives should approach their work as the masters of the country that they are. The state promotes socialist labour emulation, and commends and rewards model and advanced workers. The state encourages citizens to take part in voluntary labour.

The state provides necessary vocational training for citizens before they are employed.

Article 43 Working people in the People's Republic of China have the right to rest.

The state expands facilities for the rest and recuperation of the working people and prescribes working hours and vacations for workers and staff.

Article 44 The state applies the system of retirement for workers and staff of enterprises and institutions and for functionaries of organs of state according to law. The livelihood of retired personnel is ensured by the state and society.

Article 45 Citizens of the People's Republic of China have the right to material assistance from the state and society when they are old, ill or disabled. The state develops social insurance, social relief and medical and health services that are required for citizens to enjoy this right.

The state and society ensure the livelihood of disabled members of the armed forces, provide pensions to the families of martyrs and give preferential treatment to the families of military personnel.

The state and society help make arrangements for the work, livelihood and education of the blind, deaf-mutes and other handicapped citizens.

Article 46 Citizens of the People's Republic of China have the duty as well as the right to receive education.



The state promotes the all-round development of children and young people, morally, intellectually and physically.

Article 47 Citizens of the People's Republic of China have the freedom to engage in scientific research, literary and artistic creation and other cultural pursuits. The state encourages and assists creative endeavours conducive to the interests of the people that are made by citizens engaged in education, science, technology, literature, art and other cultural work.

Article 48 Women in the People's Republic of China enjoy equal rights with men in all spheres of life, in political, economic, cultural, social and family life.

The state protects the rights and interests of women, applies the principle of equal pay for equal work to men and women alike and trains and selects cadres from among women.

Article 49 Marriage, the family and mother and child are protected by the state.

Both husband and wife have the duty to practise family planning.

Parents have the duty to rear and educate their children who are minors, and children who have come of age have the duty to support and assist their parents.

Violation of the freedom of marriage is prohibited. Maltreatment of old people, women and children is prohibited.

Article 50 The People's Republic of China protects the legitimate rights and interests of Chinese nationals residing abroad and protects the lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing abroad.

Article 51 Citizens of the People's Republic of China, in exercising their freedoms and rights, may not infringe upon the interests of the state, of society or of the collective, or upon the lawful freedoms and rights of other citizens.

Article 52 It is the duty of citizens of the People's Republic of China to safeguard the unification of the country and the unity of all its nationalities.

Article 53 Citizens of the People's Republic of China must abide by the Constitution and the law, keep state secrets, protect public property, observe labour discipline and public order and respect social ethics.

Article 54 It is the duty of citizens of the People's Republic of China to safeguard the security, honour and interests of the motherland; they must not commit acts detrimental to the security, honour and interests of the motherland.

Article 55 It is the sacred duty of every citizen of the People's Republic of China to defend the motherland and resist aggression.

It is the honourable duty of citizens of the People's Republic of China to perform military service and join the militia in accordance with the law.

Article 56 It is the duty of citizens of the People's Republic of China to pay taxes in accordance with the law.

### Chapter III The Structure of the State

#### Section 1 The National People's Congress

Article 57 The National People's Congress of the People's Republic of China is the highest organ of state power. Its permanent body is the Standing Committee of the National People's Congress.

Article 58 The National People's Congress and its Standing Committee exercise the legislative power of the state.

Article 59 The National People's Congress is composed of deputies elected by the provinces, autonomous regions, municipalities directly under the Central Government, and special administrative regions, as well as by the armed forces. All the minority ethnic groups are entitled to appropriate representation.

Election of deputies to the National People's Congress is conducted by the Standing Committee of the National People's Congress.

The number of deputies to the National People's Congress and the procedure of their election are prescribed by law.

Article 60 The National People's Congress is elected for a term of five years.

The Standing Committee of the National People's Congress must ensure the completion of election of deputies to the succeeding National People's Congress two months prior to the expiration of the term of office of the current National People's Congress. Should extraordinary circumstances prevent such an election, it may be postponed and the term of office of the current National People's Congress extended by the decision of a vote of more than two-thirds of all those on the Standing Committee of the current National People's Congress. The election of deputies to the succeeding National People's Congress must be completed within one year after the termination of such extraordinary circumstances.

Article 61 The National People's Congress meets in session once year and is convened by its Standing Committee. A session of the National People's Congress may be convened at any time the standing Committee deems it necessary or when more than one-fifth of the deputies to the National People's Congress so propose.

When the National People's Congress meets, it elects a Presidium to conduct its session.

Article 62 The National People's Congress exercises the following functions and powers:

(1) to amend the Constitution;

- (2) to supervise the enforcement of the Constitution;
- (3) to enact and amend basic laws governing criminal offences, civil affairs, the state organs and other matters;
- (4) to elect the President and the Vice-President of the People's Republic of China;
- (5) to decide on the choice of the Premier of the State Council upon nomination by the President of the People's Republic of China, and on the choice of the Vice-Premiers, State Councillors, Ministers in charge of ministries or commissions, the Auditor-General and the Secretary-General of the State Council upon nomination by the Premier;
- (6) to elect the Chairman of the Central Military Commission and, upon nomination by the Chairman, to decide on the choice of all other members of the Central Military Commission;
- (7) to elect the President of the Supreme People's Court;
- (8) to elect the Procurator-General of the Supreme People's Procuratorate;
- (9) to examine and approve the plan for national economic and social development and the report on its implementation;
- (10) to examine and approve the state budget and the report on its implementation;
- (11) to alter or annul inappropriate decisions of the Standing Committee of the National People's Congress;
- (12) to approve the establishment of provinces, autonomous regions, and municipalities directly under the Central Government;
- (13) to decide on the establishment of special administrative regions and the systems to be instituted there;
- (14) to decide on questions of war and peace; and
- (15) to exercise such other functions and powers as the highest organ of state power should exercise.

Article 63 The National People's Congress has the power to remove from office the following persons:

- (1) the President and the Vice-President of the People's Republic of China;
- (2) the Premier, Vice-Premiers, State Councillors, Ministers in charge of ministries or commissions, the Auditor-General and the Secretary-General of the State Council;
- (3) the Chairman of the Central Military Commission and other members of the Commission;
- (4) the President of the Supreme People's Court; and
- (5) the Procurator-General of the Supreme People's Procuratorate.

Article 64 Amendments to the Constitution are to be proposed by the Standing Committee of the National People's Congress or by more than one-fifth of the deputies to the National People's Congress and adopted by a vote of more than two-thirds of all the deputies to the Congress.

Laws and resolutions are to be adopted by a majority vote of all the deputies to the National People's Congress.

Article 65 The Standing Committee of the National People's Congress is composed of the following:

the Chairman;

the Vice-Chairmen;

the Secretary-General; and

the members.

There should be an appropriate number of representatives of ethnic minorities in the Standing Committee of the National People's Congress.

The National People's Congress elects, and has the power to recall, members of its Standing Committee.

No one on the Standing Committee of the National People's Congress shall hold office in any of the administrative, judicial or procuratorial organs of the state.

Article 66 The Standing Committee of the National People's Congress is elected for the same term as the National People's Congress; it shall exercise its functions and powers until a new Standing Committee is elected by the succeeding National People's Congress.

The Chairman and Vice-Chairmen of the Standing Committee shall serve no more than two consecutive terms.

Article 67 The Standing Committee of the National People's Congress exercises the following functions and powers:

(1) to interpret the Constitution and supervise its enforcement;

(2) to enact and amend laws, with the exception of those which should be enacted by the National People's Congress;

(3) to partially supplement and amend, when the National People's Congress is not in session, laws enacted by the National People's Congress provided that the basic principles of these laws are not contravened;

(4) to interpret laws;

(5) to review and approve, when the National People's Congress is not in session, partial adjustments to the plan for national economic and social development or to the state budget that prove necessary in the course of their implementation;

- (6) to supervise the work of the State Council, the Central Military Commission, the Supreme People's Court and the Supreme People's Procuratorate;
- (7) to annul those administrative rules and regulations, decisions or orders of the State Council that contravene the Constitution or the law;
- (8) to annul those local regulations or decisions of the organs of state power of provinces, autonomous regions, and municipalities directly under the Central Government that contravene the Constitution, the law or the administrative rules and regulations;
- (9) to decide, when the National People's Congress is not in session, on the choice of Ministers in charge of ministries or commissions, the Auditor-General or the Secretary-General of the State Council upon nomination by the Premier of the State Council;
- (10) to decide, upon nomination by the Chairman of the Central Military Commission, on the choice of other members of the Commission, when the National People's Congress is not in session;
- (11) to appoint or remove, at the recommendation of the President of the Supreme People's Court, the Vice-Presidents and Judges of the Supreme People's Court, members of its Judicial Committee and the President of the Military Court;
- (12) to appoint or remove, at the recommendation of the Procurator-General of the Supreme People's Procuratorate, the Deputy Procurators-General and procurators of the Supreme People's Procuratorate, members of its Procuratorial Committee and the Chief Procurator of the Military Procuratorate, and to approve the appointment or removal of the chief procurators of the people's procuratorates of provinces, autonomous regions, and municipalities directly under the Central Government;
- (13) to decide on the appointment or recall of plenipotentiary representatives abroad;
- (14) to decide on the ratification or abrogation of treaties and important agreements concluded with foreign states;
- (15) to institute systems of titles and ranks for military and diplomatic personnel and of other specific titles and ranks;
- (16) to institute state medals and titles of honour and decide on their conferment;
- (17) to decide on the granting of special pardons;
- (18) to decide, when the National People's Congress is not in session, on the proclamation of a state of war in the event of an armed attack on the country or in fulfilment of international treaty obligations concerning common defence against aggression;
- (19) to decide on general mobilization or partial mobilization;
- (20) To decide on the declaration of the country as a whole or particular provinces, autonomous regions or municipalities directly under the Central Government to be under a state of emergency; and

(21) to exercise such other functions and powers as the National People's Congress may assign to it.

Article 68 The Chairman of the Standing Committee of the National People's Congress directs the work of the Standing Committee and convenes its meetings. The Vice-Chairmen and the Secretary-General assist the Chairman in his work.

The Chairman, the Vice-Chairmen and the Secretary-General constitute the Council of Chairmen which handles the important day-to-day work of the Standing Committee of the National People's Congress.

Article 69 The Standing Committee of the National People's Congress is responsible to the National People's Congress and reports on its work to the Congress.

Article 70 The National People's Congress establishes a Nationalities Committee, a Law Committee, a Finance and Economic Committee, an Education, Science, Culture and Public Health Committee, a Foreign Affairs Committee, an Overseas Chinese Committee and such other special committees as are necessary. These special committees work under the direction of the Standing Committee of the National People's Congress when the Congress is not in session.

The special committees examine, discuss and draw up relevant bills and draft resolutions under the direction of the National People's Congress and its Standing Committee.

Article 71 The National People's Congress and its Standing Committee may, when they deem it necessary, appoint committees of inquiry into specific questions and adopt relevant resolutions in the light of their reports.

All organs of state, public organizations and citizens concerned are obliged to furnish necessary information to the committees of inquiry when they conduct investigations.

Article 72 Deputies to the National People's Congress and members of its Standing Committee have the right, in accordance with procedures prescribed by law, to submit bills and proposals within the scope of the respective functions and powers of the National People's Congress and its Standing Committee.

Article 73 Deputies to the National People's Congress and members of the Standing Committee have the right, during the sessions of the Congress and the meetings of the Committee, to address questions, in accordance with procedures prescribed by law, to the State Council or the ministries and commissions under the State Council, which must answer the questions in a responsible manner.

Article 74 No deputy to the National People's Congress may be arrested or placed on criminal trial without the consent of the Presidium of the current session of the National People's Congress or, when the National People's Congress is not in session, without the consent of its Standing Committee.

Article 75 Deputies to the National People's Congress may not be held legally liable for their speeches or votes at its meetings.

Article 76 Deputies to the National People's Congress must play an exemplary role in abiding by the Constitution and the law and keeping state secrets and, in public activities, production and other work, assist in the enforcement of the Constitution and the law.

Deputies to the National People's Congress should maintain close contact with the units which elected them and with the people, heed and convey the opinions and demands of the people and work hard to serve them.

Article 77 Deputies to the National People's Congress are subject to supervision by the units which elected them. The electoral units have the power, through procedures prescribed by law, to recall deputies they elected.

Article 78 The organization and working procedures of the National People's Congress and its Standing Committee are prescribed by law.

## Section 2 The Principles of the People's Republic of China

Article 79 The President and Vice-President of the People's Republic of China are elected by the National People's Congress.

Citizens of the People's Republic of China who have the right to vote and to stand for election and who have reached the age of 45 are eligible for election as President or Vice-President of the People's Republic of China.

The term of office of the President and Vice-President of the People's Republic of China is the same as that of the National People's Congress, and they shall serve no more than two consecutive terms.

Article 80 The President of the People's Republic of China, in pursuance of the decisions of the National People's Congress and its Standing Committee, promulgates statutes, appoints or removes the Premier, Vice-Premiers, State Councilors, Ministers in charge of ministries or commissions, the Auditor-General and the Secretary-General of the State Council; confers state medals and titles of honor; issues orders of special pardons; declares a state of emergency, declares a state of war, and issues a mobilization order.

Article 81 The President of the People's Republic of China represents the People's Republic of China in conducting activities of national affairs and receiving foreign diplomatic representatives and; in pursuance of the decisions of the Standing Committee of the National People's Congress, appoints or recalls plenipotentiary representatives abroad, and ratifies or abrogates treaties and important agreements concluded with foreign states.

Article 82 The Vice-President of the People's Republic of China assists the President in his work.

The Vice-President of the People's Republic of China may exercise such functions and powers of the President as the President may entrust to him.

Article 83 The President and Vice-President of the , People's Republic of China exercise their functions and powers until the new President and Vice-President elected by the succeeding National People's Congress assume office.

Article 84 In the event that the office of the President of the People's Republic of China falls vacant, the Vice-President succeeds to the office of the President.

In the event that the office of the Vice-President of the People's Republic of China falls vacant, the National People's Congress shall elect a new Vice-President to fill the vacancy.

In the event that the offices of both the President and the Vice-President of the People's Republic of China fall vacant, the National People's Congress shall elect a new President and a new Vice-President. Prior to such election, the Chairman of the Standing Committee of the National People's Congress shall temporarily act as the President of the People's Republic of China.

### Section 3 The State Council

Article 85 The State Council, that is, the Central People's Government, of the People's Republic of China is the executive body of the highest organ of state power; it is the highest organ of state administration.

Article 86 The State Council is composed of the following:

the Premier;

the Vice-Premiers;

the State Councillors;

the Ministers in charge of ministries;

the Ministers in charge of commissions;

the Auditor-General; and

the Secretary-General.

The Premier assumes overall responsibility for the work of the State Council. The Ministers assume overall responsibility for the work of the ministries and commissions.

The organization of the State Council is prescribed by law.

Article 87 The term of office of the State Council is the same as that of the National People's Congress.

The Premier, Vice-Premiers and State Councillors shall serve no more than two consecutive terms.

Article 88 The Premier directs the work of the State Council. The Vice-Premiers and State Councillors assist the Premier in his work.

Executive meetings of the State Council are to be attended by the Premier, the Vice-Premiers, the State Councillors and the Secretary-General of the State Council.

The Premier convenes and presides over the executive meetings and plenary meetings of the State Council.



Article 89 The State Council exercises the following functions and powers:

- (1) to adopt administrative measures, enact administrative rules and regulations and issue decisions and orders in accordance with the Constitution and the law;
- (2) to submit proposals to the National People's Congress or its Standing Committee;
- (3) to formulate the tasks and responsibilities of the ministries and commissions of the State Council, to exercise unified leadership over the work of the ministries and commissions and to direct all other administrative work of a national character that does not fall within the jurisdiction of the ministries and commissions;
- (4) to exercise unified leadership over the work of local organs of state administration at various levels throughout the country, and to formulate the detailed division of functions and powers between the Central Government and the organs of state administration of provinces, autonomous regions, and municipalities directly under the Central Government;
- (5) to draw up and implement the plan for national economic and social development and the state budget;
- (6) to direct and administer economic affairs and urban and rural development;
- (7) to direct and administer the affairs of education, science, culture, public health, physical culture and family planning;
- (8) to direct and administer civil affairs, public security, judicial administration, supervision and other related matters;
- (9) to conduct foreign affairs and conclude treaties and agreements with foreign states;
- (10) to direct and administer the building of national defence;
- (11) to direct and administer affairs concerning the nationalities and to safeguard the equal rights of minority nationalities and the right to autonomy of the national autonomous areas;
- (12) to protect the legitimate rights and interests of Chinese nationals residing abroad and protect the lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing abroad;
- (13) to alter or annul inappropriate orders, directives and regulations issued by the ministries or commissions;
- (14) to alter or annul inappropriate decisions and orders issued by local organs of state administration at various levels;
- (15) to approve the geographic division of provinces, autonomous regions and municipalities directly under the Central Government, and to approve the establishment and geographic division of autonomous prefectures, counties, autonomous counties, and cities;

(16) To decide by law to place parts of provinces, autonomous regions, and municipalities directly under the Central Government under a state of emergency;

(17) to examine and decide on the size of administrative organs and, in accordance with the law, to appoint or remove administrative officials, train them, appraise their performance and reward or punish them; and

(18) to exercise such other functions and powers as the National People's Congress or its Standing Committee may assign to it.

Article 90 Ministers in charge of the ministries or commissions of the State Council are responsible for the work of their respective departments and they convene and preside over ministerial meetings or general and executive meetings of the commissions to discuss and decide on major issues in the work of their respective departments.

The ministries and commissions issue orders, directives and regulations within the jurisdiction of their respective departments and in accordance with the law and the administrative rules and regulations, decisions and orders issued by the State Council.

Article 91 The State Council establishes an auditing body to supervise through auditing the revenue and expenditure of all departments under the State Council and of the local governments at various levels, and the revenue and expenditure of all financial and monetary organizations, enterprises and institutions of the state.

Under the direction of the Premier of the State Council, the auditing body independently exercises its power of supervision through auditing in accordance with the law, subject to no interference by any other administrative organ or any public organization or individual.

Article 92 The State Council is responsible and reports on its work to the National People's Congress or, when the National People's Congress is not in session, to its Standing Committee.

#### Section 4 The Central Military Commission

Article 93 The Central Military Commission of the People's Republic of China directs the armed forces of the country.

The Central Military Commission is composed of the following:

the Chairman;

the Vice-Chairmen; and

the members.

The Chairman assumes overall responsibility for the work of the Central Military Commission.

The term of office of the Central Military Commission is the same as that of the National People's Congress.

Article 94 The Chairman of the Central Military Commission is responsible to the National People's Congress and its Standing Committee.

#### Section 5 The Local People's Congresses and Local People's Governments at Various Levels

Article 95 People's congresses and people's governments are established in provinces, municipalities directly under the Central Government, counties, cities, municipal districts, townships, nationality townships, and towns.

The organization of local people's congresses and local people's governments at various levels is prescribed by law.

Organs of self-government are established in autonomous regions, autonomous prefectures and autonomous counties. The organization and working procedures of organs of self-government are prescribed by law in accordance with the basic principles laid down in Sections 5 and 6 of Chapter III of the Constitution.

Article 96 Local people's congresses at various levels are local organs of state power.

Local people's congresses at and above the county level establish standing committees.

Article 97 Deputies to the people's congresses of provinces, municipalities directly under the Central Government and cities divided into districts are elected by the people's congresses at the next lower level; deputies to the people's congresses of counties, cities not divided into districts, municipal districts, townships, nationality townships, and towns are elected directly by their constituencies.

The number of deputies to local people's congresses at various levels and the manner of their election are prescribed by law.

Article 98 The term of office of local people's congresses at various levels is five years.

Article 99 Local people's congresses at various levels ensure the observance and implementation of the Constitution and the law and the administrative rules and regulations in their respective administrative areas. Within the limits of their authority as prescribed by law, they adopt and issue resolutions and examine and decide on plans for local economic and cultural development and for the development of public services.

Local people's congresses at and above the county level shall examine and approve the plans for economic and social development and the budgets of their respective administrative areas and examine and approve the reports on their implementation. They have the power to alter or annul inappropriate decisions of their own standing committees.

The people's congresses of nationality townships may, within the limits of their authority as prescribed by law, take specific measures suited to the characteristics of the nationalities concerned.

Article 100 The people's congresses of provinces and municipalities directly under the Central Government and their standing committees may adopt local regulations, which must not

contravene the Constitution and the law and administrative rules and regulations, and they shall report such local regulations to the Standing Committee of the National People's Congress for the record.

Article 101 Local people's congresses at their respective levels elect and have the power to recall governors and deputy governors, or mayors and deputy mayors, or heads and deputy heads of counties, districts, townships and towns.

Local people's congresses at and above the county level elect, and have the power to recall, presidents of people's courts and chief procurators of people's procuratorates at the corresponding level. The election or recall of chief procurators of people's procuratorates shall be reported to the chief procurators of the people's procuratorates at the next higher level for submission to the standing committees of the people's congresses at the corresponding level for approval.

Article 102 Deputies to the people's congresses of provinces, municipalities directly under the Central Government and cities divided into districts are subject to supervision by the units which elected them; deputies to the people's congresses of counties, cities not divided into districts, municipal districts, townships, nationality townships, and towns are subject to supervision by their constituencies.

The electoral units and constituencies which elect deputies to local people's congresses at various levels have the power to recall the deputies according to procedures prescribed by law.

Article 103 The standing committee of a local people's congress at and above the county level is composed of a chairman, vice-chairmen and members, and is responsible and reports on its work to the people's congress at the corresponding level.

A local people's congress at or above the county level elects, and has the power to recall, members of its standing committee.

No one on the standing committee of a local people's congress at or above the county level shall hold office in state administrative, judicial and procuratorial organs.

Article 104 The standing committee of a local people's congress at or above the county level discusses and decides on major issues in all fields of work in its administrative area; supervises the work of the people's government, people's court and people's procuratorate at the corresponding level; annuls inappropriate decisions and orders of the people's government at the corresponding level; annuls inappropriate resolutions of the people's congress at the next lower level; decides on the appointment or removal of functionaries of state organs within the limits of its authority as prescribed by law; and, when the people's congress at the corresponding level is not in session, recalls individual deputies to the people's congress at the next higher level and elects individual deputies to fill vacancies in that people's congress.

Article 105 Local people's governments at various levels are the executive bodies of local organs of state power as well as the local organs of state administration at the corresponding levels.

Governors, mayors and heads of counties, districts, townships and towns assume overall responsibility for local people's governments at various levels.

Article 106 The term of office of local people's governments at various levels is the same as that of the people's congresses at the corresponding levels.

Article 107 Local people's governments at and above the county level, within the limits of their authority as prescribed by law, conduct administrative work concerning the economy, education, science, culture, public health, physical culture, urban and rural development, finance, civil affairs, public security, nationalities affairs, judicial administration, supervision and family planning in their respective administrative areas; issue decisions and orders; appoint or remove administrative functionaries, train them, appraise their performance and reward or punish them.

People's governments of townships, nationality townships, and towns execute the resolutions of the people's congresses at the corresponding levels as well as the decisions and orders of the state administrative organs at the next higher level and conduct administrative work in their respective administrative areas.

People's governments of provinces and municipalities directly under the Central Government decide on the establishment and geographic division of townships, nationality townships, and towns.

Article 108 Local people's governments at and above the county level direct the work of their subordinate departments and of people's governments at lower levels, and have the power to alter or annul inappropriate decisions of their subordinate departments and of the people's governments at lower levels.

Article 109 Auditing bodies are established by local people's governments at and above the county level. Local auditing bodies at various levels independently exercise their power of supervision through auditing in accordance with the law and are responsible to the people's government at the corresponding level and to the auditing body at the next higher level.

Article 110 Local people's governments at various levels are responsible and report on their work to people's congresses at the corresponding levels. Local people's governments at and above the county level are responsible and report on their work to the standing committees of the people's congresses at the corresponding levels when the congresses are not in session.

Local people's governments at various levels are responsible and report on their work to the state administrative organs at the next higher level. Local people's governments at various levels throughout the country are state administrative organs under the unified leadership of the State Council and are subordinate to it.

Article 111 The residents committees and villagers committees established among urban and rural residents on the basis of their place of residence are mass organizations of self-management at the grass-roots level. The chairman, vice-chairmen and members of each residents or villagers committee are elected by the residents. The relationship between the residents and villagers committees and the grass-roots organs of state power is prescribed by law.

The residents and villagers committees establish sub-committees for people's mediation, public security, public health and other matters in order to manage public affairs and social services in

their areas, mediate civil disputes, help maintain public order and convey residents opinions and demands and make suggestions to the people's government.

## Section 6 The Organs of Self-Government of National Autonomous Area

Article 112 The organs of self-government of national autonomous areas are the people's congresses and people's governments of autonomous regions, autonomous prefectures and autonomous counties.

Article 113 In the people's congress of an autonomous region, autonomous prefecture or autonomous county, in addition to the deputies of the nationality exercising regional autonomy in the administrative area, the other nationalities inhabiting the area are also entitled to appropriate representation.

Among the chairman and vice-chairmen of the standing committee of the people's congress of an autonomous region, autonomous prefecture or autonomous county there shall be one or more citizens of the nationality or nationalities exercising regional autonomy in the area concerned.

Article 114 The chairman of an autonomous region, the prefect of an autonomous prefecture or the head of an autonomous county shall be a citizen of the nationality exercising regional autonomy in the area concerned.

Article 115 The organs of self-government of autonomous regions, autonomous prefectures and autonomous counties exercise the functions and powers of local organs of state as specified in 5 of Chapter III of the Constitution. At the same time, they exercise the power of autonomy within the limits of their authority as prescribed by the Constitution, the Law of the People's Republic of China on Regional National Autonomy and other laws and implement the laws and policies of the state in the light of the existing local situation.

Article 116 The people's congresses of national autonomous areas have the power to enact regulations on the exercise of autonomy and other separate regulations in the light of the political, economic and cultural characteristics of the nationality or nationalities in the areas concerned. The regulations on the exercise of autonomy and other separate regulations of autonomous regions shall be submitted to the Standing Committee of the National People's Congress for approval before they go into effect. Those of autonomous prefectures and counties shall be submitted to the standing committees of the people's congresses of provinces or autonomous regions for approval before they go into effect, and they shall be reported to the Standing Committee of the National People's Congress for the record.

Article 117 The organs of self-government of the national autonomous areas have the power of autonomy in administering the finances of their areas. All revenues accruing to the national autonomous areas under the financial system of the state shall be managed and used by the organs of self-government of those areas on their own.

Article 118 The organs of self-government of the national autonomous areas independently arrange for and administer local economic development under the guidance of state plans.

In exploiting natural resources and building enterprises in the national autonomous areas, the state shall give due consideration to the interests of those areas.

Article 119 The organs of self-government of the national autonomous areas independently administer educational, scientific, cultural, public health and physical culture affairs in their respective areas, protect and sift through the cultural heritage of the nationalities and work for a vigorous development of their cultures.

Article 120 The organs of self-government of the national autonomous areas may, in accordance with the military system of the state and practical local needs and with the approval of the State Council, organize local public security forces for the maintenance of public order.

Article 121 In performing their functions, the organs of self-government of the national autonomous areas, in accordance with the regulations on the exercise of autonomy in those areas, employ the spoken and written language or languages in common use in the locality.

Article 122 The state provides financial, material and technical assistance to the minority nationalities to accelerate their economic and cultural development.

The state helps the national autonomous areas train large numbers of cadres at various levels and specialized personnel and skilled workers of various professions and trades from among the nationality or nationalities in those areas.

#### Section 7 The People's Courts and the People's Procuratorates

Article 123 The people's courts of the People's Republic of China are the judicial organs of the state.

Article 124 The People's Republic of China establishes the Supreme People's Court and the people's courts at various local levels, military courts and other special people's courts.

The term of office of the President of the Supreme People's Court is the same as that of the National People's Congress. The President shall serve no more than two consecutive terms.

The organization of the people's courts is prescribed by law.

Article 125 Except in special circumstances as specified by law, all cases in the people's courts are heard in public. The accused has the right to defence.

Article 126 The people's courts exercise judicial power independently, in accordance with the provisions of the law, and are not subject to interference by any administrative organ, public organization or individual.

Article 127 The Supreme People's Court is the highest judicial organ.

The Supreme People's Court supervises the administration of justice by the people's courts at various local levels and by the special people's courts. People's courts at higher levels supervise the administration of justice by those at lower levels.

Article 128 The Supreme People's Court is responsible to the National People's Congress and its Standing Committee. Local people's courts at various levels are responsible to the organs of state power which created them.

Article 129 The people's procuratorates of the People's Republic of China are state organs for legal supervision.

Article 130 The People's Republic of China establishes the Supreme People's Procuratorate and the people's procuratorates at various local levels, military procuratorates and other special people's procuratorates.

The term of office of the Procurator-General of the Supreme People's Procuratorate is the same as that of the National People's Congress; the Procurator-General shall serve no more than two consecutive terms.

The organization of the people's procuratorates is prescribed by law.

Article 131 The people's procuratorates exercise procuratorial power independently, in accordance with the provisions of the law, and are not subject to interference by any administrative organ, public organization or individual.

Article 132 The Supreme People's Procuratorate is the highest procuratorial organ.

The Supreme People's Procuratorate directs the work of the people's procuratorates at various local levels and of the special people's procuratorates. People's procuratorates at higher levels direct the work of those at lower levels.

Article 133 The Supreme People's Procuratorate is responsible to the National People's Congress and its Standing Committee. People's procuratorates at various local levels are responsible to the organs of state power which created them and to the people's procuratorates at higher levels.

Article 134 Citizens of all China's nationalities have the right to use their native spoken and written languages in court proceedings. The people's courts and people's procuratorates should provide translation for any party to the court proceedings who is not familiar with the spoken or written languages commonly used in the locality.

In an area where people of a minority nationality live in a concentrated community or where a number of nationalities live together, court hearings should be conducted in the language or languages commonly used in the locality; indictments, judgments, notices and other documents should be written, according to actual needs, in the language or languages commonly used in the locality.

Article 135 The people's courts, the people's procuratorates and the public security organs shall, in handling criminal cases, divide their functions, each taking responsibility for its own work, and they shall coordinate their efforts and check each other to ensure the correct and effective enforcement of the law.

Chapter IV The National Flag, the national Anthem, the National Emblem, and the Capital



Article 136 The national flag of the People's Republic of China is a red flag with five stars.

The national anthem of the People's Republic of China is "March of the Volunteers".

Article 137 The national emblem of the People's Republic of China consists of an image of Tian'anmen in its centre illuminated by five stars and encircled by ears of grain and a cogwheel.

Article 138 The capital of the People's Republic of China is Beijing.

## **Law of the People's Republic of China on Regional National Autonomy**

Adopted at the Second Session of the Sixth National People's Congress, promulgated by Order No.13 of the President of the People's Republic of China on May 31, 1984, and effective as of October 1, 1984

### Preface

The People's Republic of China is a unitary multinational state created jointly by the people of all its nationalities. Regional national autonomy is the basic policy adopted by the Communist Party of China for the solution of the national question in China through its application of Marxism-Leninism; it is an important political system of the state.

Regional national autonomy means that the minority nationalities, under unified state leadership, practise regional autonomy in areas where they live in concentrated communities and set up organs of self-government for the exercise of the power of autonomy. Regional national autonomy embodies the state's full respect for and guarantee of the right of the minority nationalities to administer their internal affairs and its adherence to the principle of equality, unity and common prosperity for all its nationalities.

Regional national autonomy has played an enormous role in giving full play to the initiative of all nationalities as masters of the country, in developing among them a socialist relationship of equality, unity and mutual assistance, in consolidating the unification of the country and in promoting socialist construction in the national autonomous areas and the rest of the country. The system of regional national autonomy will have a still greater role to play in the country's socialist modernization in the years to come.

It has been proven by practice that adherence to regional national autonomy requires that the national autonomous areas be given effective guarantees for implementing state laws and policies in the light of existing local conditions; that large numbers of cadres at various levels and specialized personnel and skilled workers of various professions and trades be trained from among the minority nationalities; that the national autonomous areas strive to promote local socialist construction in the spirit of self-reliance and hard work and contribute to the nation's construction as a whole; and that the state strive to help the national autonomous areas speed up their economic and cultural development in accordance with the plans for national economic and social development. In the effort to maintain the unity of the nationalities, both big-nation chauvinism, mainly Han chauvinism, and local national chauvinism must be opposed.

Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, the people of various nationalities in the autonomous areas shall, together with the people of the whole country, adhere to the people's democratic dictatorship and to the socialist road, concentrate their efforts on socialist modernization, speed up the economic and cultural development of the national autonomous areas, work towards their unity and

prosperity and strive for the common prosperity of all nationalities and for the transformation of China into a socialist country with a high level of culture and democracy.

The Law of the People's Republic of China on Regional National Autonomy is the basic law for the implementation of the system of regional national autonomy prescribed in the Constitution.

## Chapter I General Provisions

Article 1 The Law of the People's Republic of China on Regional National Autonomy is formulated in accordance with the Constitution of the People's Republic of China.

Article 2 Regional autonomy shall be practised in areas where minority nationalities live in concentrated communities.

National autonomous areas shall be classified into autonomous regions, autonomous prefectures and autonomous counties.

All national autonomous areas are integral parts of the People's Republic of China.

Article 3 Organs of self-government shall be established in national autonomous areas as local organs of state power at a particular level.

The organs of self-government of national autonomous areas shall apply the principle of democratic centralism.

Article 4 The organs of self-government of national autonomous areas shall exercise the functions and powers of local organs of state as specified in Section 5 of Chapter III of the Constitution. At the same time, they shall exercise the power of autonomy within the limits of their authority as prescribed by the Constitution, by this Law and other laws, and implement the laws and policies of the state in the light of existing local conditions.

The organs of self-government of autonomous prefectures shall exercise the functions and powers of local state organs over cities divided into districts and cities with counties under their jurisdiction and, at the same time, exercise the power of autonomy.

Article 5 The organs of self-government of national autonomous areas must uphold the unity of the country and guarantee that the Constitution and other laws are observed and implemented in these areas.

Article 6 The organs of self-government of national autonomous areas shall lead the people of the various nationalities in a concentrated effort to promote socialist modernization.

On the principle of not contravening the Constitution and the laws, the organs of self-government of national autonomous areas shall have the power to adopt special policies and flexible measures in the light of local conditions to speed up the economic and cultural development of these areas.

Under the guidance of state plans and on the basis of actual conditions, the organs of self-government of national autonomous areas shall steadily increase labour productivity and economic results, develop social productive forces and gradually raise the material living standards of the people of the various nationalities.

The organs of self-government of national autonomous areas shall inherit and carry forward the fine traditions of national cultures, build a socialist society with an advanced culture and ideology and with national characteristics, and steadily raise the socialist consciousness and scientific and cultural levels of the people of the various nationalities.

Article 7 The organs of self-government of national autonomous areas shall place the interests of the state as a whole above anything else and make positive efforts to fulfil the tasks assigned by state organs at higher levels.

Article 8 State organs at higher levels shall guarantee the exercise of the power of autonomy by the organs of self-government of national autonomous areas and shall, in accordance with the characteristics and needs of these areas, strive to help them speed up their socialist construction.

Article 9 State organs at higher levels and the organs of self-government of national autonomous areas shall uphold and develop the socialist relationship of equality, unity and mutual assistance among all of China's nationalities. Discrimination against and oppression of any nationality shall be prohibited; any act which undermines the unity of the nationalities or instigates national division shall also be prohibited.

Article 10 The organs of self-government of national autonomous areas shall guarantee the freedom of the nationalities in these areas to use and develop their own spoken and written languages and their freedom to preserve or reform their own folkways and customs.

Article 11 The organs of self-government of national autonomous areas shall guarantee the freedom of religious belief to citizens of the various nationalities.

No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion, nor may they discriminate against citizens who believe in, or do not believe in, any religion.

The state shall protect normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state.

Religious bodies and religious affairs shall not be subject to any foreign domination.

## Chapter II Establishment of National Autonomous Areas and the Structure of the Organs of Self-government

Article 12 Autonomous areas may be established where one or more minority nationalities live in concentrated communities, in the light of local conditions such as the relationship among the various nationalities and the level of economic development, and with due consideration for historical background.

Within a national autonomous area, appropriate autonomous areas or nationality townships may be established where other minority nationalities live in concentrated communities.

Some residential areas and towns of the Han nationality or other nationalities may be included in a national autonomous area in consideration of actual local conditions.

Article 13 With the exception of special cases, the name of a national autonomous area shall be composed of the name of the locality and the name of the nationality and the administrative status, in that order.

Article 14 The establishment of a national autonomous area, the delineation of its boundaries and the elements of its name shall be proposed by the state organ at the next higher level jointly with the state organ in the relevant locality, after full consultation with representatives of the relevant nationalities, before they are submitted for approval according to the procedures prescribed by law.

Once defined, the boundaries of a national autonomous area may not be altered without authorization. When an alteration is found necessary, it shall be proposed by the relevant department of the state organ at the next higher level after full consultation with the organ of self-government of the national autonomous area before it is submitted to the State Council for approval.

Article 15 The organs of self-government of national autonomous areas shall be the people's congresses and people's governments of autonomous regions, autonomous prefectures and autonomous counties.

The people's governments of national autonomous areas shall be responsible and report on their work to the people's congresses at corresponding levels and to the administrative organs of the state at the next higher level. When the people's congresses at corresponding levels are not in session, they shall be responsible and report on their work to the standing committees of these people's congresses. The people's governments of all national autonomous areas shall be administrative organs of the state under the unified leadership of the State Council and shall be subordinate to it.

The organization and work of the organs of self-government of national autonomous areas shall be specified in these areas' regulations on the exercise of autonomy or separate regulations, in accordance with the Constitution and other laws.

Article 16 In the people's congress of a national autonomous area, in addition to the deputies from the nationality exercising regional autonomy in the administrative area, the other nationalities inhabiting the area are also entitled to appropriate representation.

The number and proportion of deputies to the people's congress of a national autonomous area from the nationality exercising regional autonomy and from the other minority nationalities shall be decided upon by the standing committee of the people's congress of a province or an autonomous region, in accordance with the principles prescribed by law, and shall be reported to the Standing Committee of the National People's Congress for the record.

Among the chairman and vice-chairmen of the standing committee of the people's congress of a national autonomous area shall be one or more citizens of the nationality exercising regional autonomy in the area.

Article 17 The chairman of an autonomous region, the prefect of an autonomous prefecture or the head of an autonomous county shall be a citizen of the nationality exercising regional autonomy in the area concerned. Other posts in the people's government of an autonomous region, an autonomous prefecture or an autonomous county should, whenever possible, be assumed by people of the nationality exercising regional autonomy and of other minority nationalities in the area concerned.

The people's governments of national autonomous areas shall apply the system of giving overall responsibility to the chairman of an autonomous region, the prefect of an autonomous prefecture or the head of an autonomous county, who shall direct the work of the people's governments at their respective levels.

Article 18 The cadres in the departments under the organs of self-government of a national autonomous area should, whenever possible, be chosen from citizens of the nationality exercising regional autonomy and of the other minority nationalities in the area.

### Chapter III The Power of Autonomy of Organs of Self-government

Article 19 The people's congresses of national autonomous areas shall have the power to enact regulations on the exercise of autonomy and separate regulations in the light of the political, economic and cultural characteristics of the nationality or nationalities in the areas concerned. The regulations on the exercise of autonomy and separate regulations of autonomous regions shall be submitted to the Standing Committee of the National People's Congress for approval before they go into effect. The regulations on the exercise of autonomy and separate regulations of autonomous prefectures and autonomous counties shall be submitted to the standing committees of the people's congresses of provinces or autonomous regions for approval before they go into effect, and they shall be reported to the Standing Committee of the National People's Congress for the record.

Article 20 If a resolution, decision, order or instruction of a state organ at a higher level does not suit the conditions in a national autonomous area, the organ of self-government of the area may either implement it with certain alterations or cease implementing it after reporting to and receiving the approval of the state organ at a higher level.

Article 21 While performing its functions, the organ of self-government of a national autonomous area shall, in accordance with the regulations on the exercise of autonomy of the area, use one or several languages commonly used in the locality; where several commonly used languages are used for the performance of such functions, the language of the nationality exercising regional autonomy may be used as the main language.

Article 22 In accordance with the needs of socialist construction, the organs of self-government of national autonomous areas shall take various measures to train large numbers of cadres at different levels and various kinds of specialized personnel, including scientists, technicians and managerial executives, as well as skilled workers from among the local nationalities, giving full play to their roles, and shall pay attention to the training of cadres at various levels and specialized and technical personnel of various kinds from among the women of minority nationalities.

The organs of self-government of national autonomous areas may adopt special measures to provide preferential treatment and encouragement to specialized personnel joining in the various kinds of construction in these areas.

Article 23 When recruiting personnel, enterprises and institutions in national autonomous areas shall give priority to minority nationalities and may enlist them from the population of minority nationalities in rural and pastoral areas. When recruiting personnel from the population of minority nationalities in rural and pastoral areas, autonomous prefectures and autonomous counties must report to and secure the approval of the people's governments of the provinces or autonomous regions.

Article 24 The organs of self-government of national autonomous areas may, in accordance with the military system of the state and practical local need and with the approval of the State Council, organize local public security forces for the maintenance of public order.

Article 25 Under the guidance of state plans, the organs of self-government of national autonomous areas shall independently arrange for and administer local economic development.

Article 26 Under the guidance of state plans, the organs of self-government of national autonomous areas shall work out the guidelines, policies and plans for economic development in the light of local characteristics and needs.

Article 27 Given the prerequisite of adherence to the principles of socialism, the organs of self-government of national autonomous areas shall, in accordance with legal stipulations and in the light of the characteristics of local economic development, rationally readjust the relations of production and reform the structure of economic administration.

In accordance with legal stipulations, the organs of self-government of national autonomous areas shall define the ownership of, and the right to use, the pastures and forests within these areas.

Article 28 In accordance with legal stipulations, the organs of self-government of national autonomous areas shall manage and protect the natural resources of these areas.

The organs of self-government of national autonomous areas shall protect and develop grasslands and forests and organize and encourage the planting of trees and grass. Destruction of grasslands and forests by any organization or individual by whatever means shall be prohibited.

In accordance with legal stipulations and unified state plans, the organs of self-government of national autonomous areas may give priority to the rational exploitation and utilization of the natural resources that the local authorities are entitled to develop.

Article 29 Under the guidance of state plans, the organs of self-government of national autonomous areas shall independently arrange local capital construction projects according to their financial and material resources and other specific local conditions.

Article 30 The organs of self-government of national autonomous areas shall independently administer the enterprises and institutions under local jurisdiction.

Article 31 The organs of self-government of national autonomous areas shall independently arrange for the use of industrial, agricultural and other local and special products after fulfilling the quotas for state purchase and for state distribution at a higher level.

Article 32. In accordance with state provisions, the organs of self-government of national autonomous areas may pursue foreign economic and trade activities and may, with the approval of the State Council, open foreign trade ports.

National autonomous areas adjoining foreign countries may develop border trade with the approval of the State Council.

While conducting foreign economic and trade activities, the organs of self-government of the national autonomous areas shall enjoy preferential treatment by the state with regard to the proportion of foreign exchange retained by them and in other respects.

Article 33 The finance of a national autonomous area constitutes a particular level of finance and is a component of state finance.

The organs of self-government of national autonomous areas shall have the power of autonomy in administering the finances of their areas. All revenues accruing to the national autonomous areas under the financial system of the state shall be managed and used by the organs of self-government of these areas on their own.

The revenues and expenditures of national autonomous areas shall be specified by the State Council on the principle of giving preferential treatment to such areas.

In accordance with stipulations concerning the state financial system, if the revenues of a national autonomous area exceeds its expenditures, a fixed amount of the surplus shall be delivered to the financial department at a higher level. Once fixed, the amount to be delivered may remain unchanged for several years. If the expenditures of a national autonomous area exceeds its revenues, a subsidy shall be granted by the financial department at a higher level.



A national autonomous area shall, in accordance with state stipulations, lay aside a reserve fund for expenditure in its budget. The proportion of the reserve fund in its budget shall be higher than that in the budgets of other areas.

While implementing its fiscal budget, the organ of self-government of a national autonomous area shall arrange for the use of extra income and savings from expenditures at its own discretion.

Article 34 In accordance with the principles set by the state and in the light of local conditions, the organs of self-government of national autonomous areas may work out supplementary provisions and concrete procedures with regard to the standards of expenditure, the sizes of the staff and the quotas of work for their respective areas. The supplementary provisions and concrete procedures worked out by autonomous regions shall be reported to the State Council for the record; those worked out by autonomous prefectures and autonomous counties shall be reported to the people's governments of the relevant provinces or autonomous regions for approval.

Article 35 While implementing the tax laws of the state, the organs of self-government of national autonomous areas may grant tax exemptions or reductions for certain items of local financial income which should be encouraged or given preferential consideration in taxation, in addition to items on which tax reduction or exemption require unified examination and approval by the state. The decisions of autonomous prefectures and autonomous counties on tax deduction and exemption shall be reported to the people's governments of the relevant provinces or autonomous regions for approval

Article 36 In accordance with the guidelines of the state on education and with the relevant stipulations of the law, the organs of self-government of national autonomous areas shall decide on the plans for the development of education in these areas, on the establishment of various kinds of schools at different levels, on their educational system, forms, curricula, the language used in instruction and enrollment procedures.

Article 37 The organs of self-government of national autonomous areas shall independently develop education for the nationalities by eliminating illiteracy, setting up various kinds of schools, spreading compulsory primary education, developing secondary education and establishing specialized schools for the nationalities, such as teachers schools, secondary technical schools, vocational schools and institutes of nationalities to train specialized personnel from among the minority nationalities.

The organs of self-government of national autonomous areas may set up public primary schools and secondary schools, mainly boarding schools and schools providing subsidies, in pastoral areas and economically under developed, sparsely populated mountain areas inhabited by minority nationalities.

Schools where most of the students come from minority nationalities should, whenever possible, use textbooks in their own languages and use these languages as the media of instruction. Classes for the teaching of Chinese (the Han language) shall be opened for senior grades of primary schools or for secondary schools to popularize Putonghua, the common speech based on Beijing pronunciation.

Article 38 The organs of self-government of national autonomous areas shall independently develop literature, art, the press, publishing, radio broadcasting, the film industry, television and other cultural undertakings in forms and with characteristics unique to the nationalities.

The organs of self-government of national autonomous areas shall collect, sort out, translate and publish books of the nationalities and protect the scenic spots and historical sites in their areas, their precious cultural relics and their other important historical and cultural legacies.

Article 39 The organs of self-government of national autonomous areas shall make independent decisions on local plans for developing science and technology and spreading knowledge of science and technology.

Article 40 The organs of self-government of national autonomous areas shall make independent decisions on plans for developing local medical and health services and for advancing both modern medicine and the traditional medicine of the nationalities.

The organs of self-government of national autonomous areas shall see to a more effective prevention and treatment of endemic diseases, provide better protection for the health of women and children, and improve sanitary conditions.

Article 41 The organs of self-government of national autonomous areas shall independently develop sports, promote the traditional sports of the nationalities and improve the physical fitness of the people of the various nationalities.

Article 42 The organs of self-government of the national autonomous areas shall strive to develop exchanges and cooperation with other areas in education, science and technology, culture and art, public health, sports, etc.

In accordance with relevant state provisions, the organs of self-government of autonomous regions and autonomous prefectures may conduct exchanges with foreign countries in education, science and technology, culture and art, public health, sports, etc.

Article 43 In accordance with legal stipulations, the organs of self-government of national autonomous areas shall work out measures for control of the transient population.

Article 44 In accordance with legal stipulations, the organs of self-government of national autonomous areas shall, in the light of local conditions, work out measures for family planning.

Article 45 The organs of self-government of national autonomous areas shall protect and improve the living environment and the ecological environment and shall prevent and control pollution and other public hazards.

#### Chapter IV The People's Courts and People's Procuratorates of National Autonomous Areas

Article 46 The people's courts and people's procuratorates of national autonomous areas shall be responsible to the people's congresses at corresponding levels and their standing committees. The people's procuratorates of national autonomous areas shall also be responsible to the people's procuratorates at higher levels.

The administration of justice by the people's courts of national autonomous areas shall be supervised by the Supreme People's Court and by people's courts at higher levels. The work of the people's procuratorates of national autonomous areas shall be directed by the Supreme People's Procuratorate and by people's procuratorates at higher levels.

Members of the leadership and of the staff of the people's court and of the people's procuratorate of a national autonomous area shall include people from the nationality exercising regional autonomy in that area.

Article 47 In the prosecution and trial of cases, the people's courts and people's procuratorates of national autonomous areas shall use the language commonly used in the locality. They shall guarantee that citizens of the various nationalities enjoy the right to use the spoken and written languages of their own nationalities in court proceedings. The people's courts and people's procuratorates should provide translation for any party to the court proceedings who is not familiar with the spoken or written languages commonly used in the locality. Legal documents should be written, according to actual needs, in the language or languages commonly used in the locality.

## Chapter V Relations Among Nationalities Within a National Autonomous Areas

Article 48 The organ of self-government of a national autonomous area shall guarantee equal rights for the various nationalities in the area.

The organ of self-government of a national autonomous area shall unite the cadres and masses of the various nationalities and give full play to their initiative in a joint effort to develop the area.

Article 49 The organ of self-government of a national autonomous area shall persuade and encourage cadres of the various nationalities to learn each other's spoken and written languages. Cadres of Han nationality should learn the spoken and written languages of the local minority nationalities. While learning and using the spoken and written languages of their own nationalities, cadres of minority nationalities should also learn Putonghua and the written Chinese (Han) language commonly used throughout the country.

Awards should be given to state functionaries in national autonomous areas who can use skillfully two or more spoken or written languages that are commonly used in the locality.

Article 50 The organ of self-government of a national autonomous area shall help other minority nationalities living in concentrated communities in the area establish appropriate autonomous areas or nationality townships.

The organ of self-government of a national autonomous area shall help the various nationalities in the area develop their economic, educational, scientific, cultural, public health and physical culture affairs.

The organ of self-government of a national autonomous area shall give consideration to the characteristics and needs of nationalities living in settlements scattered over the area.

Article 51 In dealing with special issues concerning the various nationalities within its area, the organ of self-government of a national autonomous area must conduct full consultation with their representatives and respect their opinions.

Article 52 The organ of self-government of a national autonomous area shall guarantee that the citizens of the various nationalities in the area enjoy the rights of citizens prescribed in the Constitution and shall educate them in the need to perform their duties as citizens.

Article 53 The organ of self-government of a national autonomous area shall promote the civic virtues of love of the motherland, of the people, of labour, of science and of socialism and conduct education among the citizens of the various nationalities in the area in patriotism, communism and state policies concerning the nationalities. The cadres and masses of the various nationalities must be educated to trust, learn from and help one another and to respect the spoken and written languages, folkways and customs and religious beliefs of one another in a joint effort to safeguard the unification of the country and the unity of all the nationalities.

## Chapter VI Leadership and Assistance from State Organs at Higher Levels

Article 54 The resolutions, decisions, orders and instructions concerning national autonomous areas adopted by state organs at higher levels should suit the conditions in these areas.

Article 55 State organs at higher levels shall provide financial, material and technical assistance to national autonomous areas to accelerate their economic and cultural development.

In making plans for national economic and social development, state organs at higher levels should take into consideration the characteristics and needs of national autonomous areas.

Article 56 The state shall set aside special funds to help national autonomous areas develop their economy and culture.

The special funds set aside by the state and its provisional grants to the nationalities may not be deducted, withheld or misappropriated by any state agency, nor may they be used to substitute for the normal budgetary revenues of national autonomous areas.

Article 57 In accordance with the state policy for trade with the minority nationalities, state organs at higher levels shall give consideration to the commercial, supply and marketing, and medical and pharmaceutical enterprises in national autonomous areas.

Article 58 State organs at higher levels shall rationally review or readjust the base figures for the financial revenues and expenditures of national autonomous areas.

Article 59 While distributing the means of production and means of subsistence, state organs at higher levels shall give consideration to the needs of national autonomous areas.

While making plans for the state purchase of industrial and agricultural products and other local and special products of national autonomous areas and for state distribution of such products at a higher level, state organs at higher levels shall give consideration to the interests of the national autonomous areas and the producers, and set reasonable base figures for state distribution at a higher level or a reasonable ratio between the amount to be purchased and the amount to be kept.

Article 60 In matters of investment, loans and taxation and in production, supply, transportation and sales, state organs at higher levels shall help national autonomous areas in the rational exploitation of local resources to develop local industry, transportation and energy and to advance and improve the production of goods specially needed by minority nationalities and of traditional handicrafts.

Article 61 State organs at higher levels shall enlist and support economically developed areas in pursuing economic and technological cooperation with national autonomous areas to help the latter areas raise their level of operation and management and their level of production technology.

Article 62 While exploiting resources and undertaking construction in national autonomous areas, the state shall give consideration to the interests of these areas, make arrangements favorable to the economic construction there and pay proper attention to the productive pursuits and the life of the minority nationalities there.

Enterprises and institutions affiliated to state organs at higher levels but located in national autonomous areas shall give priority to local minority nationalities when recruiting personnel.

Enterprises and institutions affiliated to state organs at higher levels but located in national autonomous areas shall respect the power of autonomy of the local organs of self-government and accept their supervision.

Article 63 Without the consent of the organ of self-government of a national autonomous area, no state agency at a higher level may change the affiliation of an enterprise under the administration of the local government.

Article 64 State organs at higher levels shall help national autonomous areas train, from among local nationalities, large numbers of cadres at various levels and specialized personnel and skilled workers of different professions and trades; in accordance with local needs and in various forms, they shall send appropriate numbers of teachers, doctors, scientists and technicians as well as managerial executives to work in national autonomous areas and provide them with proper benefits.

Article 65 State organs at higher levels shall help national autonomous areas speed up the development of education and raise the scientific and cultural levels of the people of local nationalities.

The state shall set up institutes of nationalities and, in other institutions of higher education, nationality-oriented classes and preparatory classes which only enroll students from minority nationalities. Preferred enrollment and preferred assignment of jobs may also be introduced. In enrollment, institutions of higher education and secondary technical schools shall appropriately set lower standards and requirements for the admission of students from minority nationalities.

Article 66 State organs at higher levels shall intensify education among cadres and masses of the various nationalities in the government's policies concerning nationalities and frequently review the observance and implementation of these policies and relevant laws.

## Chapter VII Supplementary Provisions

Article 67 This Law has been adopted by the National People's Congress, and shall go into effect on October 1, 1984

.

## Anti-Secession Law

Adopted at the Third Session of the Tenth National People's Congress on March 14, 2005

Article 1 This Law is formulated, in accordance with the Constitution, for the purpose of opposing and checking Taiwan's secession from China by secessionists in the name of "Taiwan independence", promoting peaceful national reunification, maintaining peace and stability in the Taiwan Straits, preserving China's sovereignty and territorial integrity, and safeguarding the fundamental interests of the Chinese nation.

Article 2 There is only one China in the world. Both the mainland and Taiwan belong to one China. China's sovereignty and territorial integrity brook no division. Safeguarding China's sovereignty and territorial integrity is the common obligation of all Chinese people, the Taiwan compatriots included.

Taiwan is part of China. The state shall never allow the "Taiwan independence" secessionist forces to make Taiwan secede from China under any name or by any means.

Article 3 The Taiwan question is one that is left over from China's civil war of the late 1940s.

Solving the Taiwan question and achieving national reunification is China's internal affair, which subjects to no interference by any outside forces.

Article 4 Accomplishing the great task of reunifying the motherland is the sacred duty of all Chinese people, the Taiwan compatriots included.

Article 5 Upholding the principle of one China is the basis of peaceful reunification of the country.

To reunify the country through peaceful means best serves the fundamental interests of the compatriots on both sides of the Taiwan Straits. The state shall do its utmost with maximum sincerity to achieve a peaceful reunification.

After the country is reunified peacefully, Taiwan may practice systems different from those on the mainland and enjoy a high degree of autonomy.

Article 6 The state shall take the following measures to maintain peace and stability in the Taiwan Straits and promote cross-Straits relations:

- (1) to encourage and facilitate personnel exchanges across the Straits for greater mutual understanding and mutual trust;
- (2) to encourage and facilitate economic exchanges and cooperation, realize direct links of trade, mail and air and shipping services, and bring about closer economic ties between the two sides of the Straits to their mutual benefit;
- (3) to encourage and facilitate cross-Straits exchanges in education, science, technology, culture, health and sports, and work together to carry forward the proud Chinese cultural traditions;

- (4) to encourage and facilitate cross-Straits cooperation in combating crimes; and
- (5) to encourage and facilitate other activities that are conducive to peace and stability in the Taiwan Straits and stronger cross-Straits relations.

The state protects the rights and interests of the Taiwan compatriots in accordance with law.

Article 7 The state stands for the achievement of peaceful reunification through consultations and negotiations on an equal footing between the two sides of the Taiwan Straits. These consultations and negotiations may be conducted in steps and phases and with flexible and varied modalities.

The two sides of the Taiwan Straits may consult and negotiate on the following matters:

- (1) officially ending the state of hostility between the two sides;
- (2) mapping out the development of cross-Straits relations;
- (3) steps and arrangements for peaceful national reunification;
- (4) the political status of the Taiwan authorities;
- (5) the Taiwan region's room of international operation that is compatible with its status; and
- (6) other matters concerning the achievement of peaceful national reunification.

Article 8 In the event that the "Taiwan independence" secessionist forces should act under any name or by any means to cause the fact of Taiwan's secession from China, or that major incidents entailing Taiwan's secession from China should occur, or that possibilities for a peaceful reunification should be completely exhausted, the state shall employ non-peaceful means and other necessary measures to protect China's sovereignty and territorial integrity.

The State Council and the Central Military Commission shall decide on and execute the non-peaceful means and other necessary measures as provided for in the preceding paragraph and shall promptly report to the Standing Committee of the National People's Congress.

Article 9 In the event of employing and executing non-peaceful means and other necessary measures as provided for in this Law, the state shall exert its utmost to protect the lives, property and other legitimate rights and interests of Taiwan civilians and foreign nationals in Taiwan, and to minimize losses. At the same time, the state shall protect the rights and interests of the Taiwan compatriots in other parts of China in accordance with law.

Article 10 This Law shall go into effect as of the date of promulgation.



# State Security Law of the People's Republic of China

Adopted at the 30th Meeting of the Standing Committee of the Seventh National People's Congress and promulgated by Order No. 68 of the President of the People's Republic of China on February 22, 1993

## Contents

### Chapter I General Provisions

### Chapter II Functions and Powers of the State Security Organs in the Work of State Security

### Chapter III Duties and Rights of Citizens and Organizations in Safeguarding State Security

### Chapter IV Legal Liability

### Chapter V Supplementary Provisions

## Chapter I General Provisions

Article 1 This Law is formulated in accordance with the Constitution of the People's Republic of China for the purpose of safeguarding State security, protecting the State power of the people's democratic dictatorship and the socialist system, and ensuring the smooth progress of reform, opening-up, and the socialist modernization drive.

Article 2 The State security organs, as stipulated by this Law, are the competent authorities in charge of State security.

The State security organs and the public security organs shall, in accordance with the division of functions and powers as prescribed by the State, attend to their respective duties, and closely cooperate with each other so as to safeguard State security.

Article 3 Citizens of the People's Republic of China shall have the duty to safeguard the security, honour and interests of the State, and must not commit any act endangering the security, honour or interests of the State.

All State organs, armed forces, political parties, public organizations, enterprises and institutions shall have the duty to safeguard the security of the State.

The State security organs, in the work of State security, must rely on the people's support, and shall mobilize and organize the people to prevent and check any act endangering the security of the State.

Article 4 Any organization or individual that has committed any act endangering the State security of the People's Republic of China shall be prosecuted according to law.

"Act endangering State security" as referred to in this Law means any of the following acts endangering the State security of the People's Republic of China committed by institutions, organizations or individuals outside the territory of the People's Republic of China, or, by other persons under the instigation or financial support of the afore-mentioned institutions, organizations or individuals, or, by organizations or individuals within the territory in collusion with institutions, organizations or individuals outside the territory:

- (1) plotting to subvert the government, dismember the State or overthrow the socialist system;
- (2) joining an espionage organization or accepting a mission assigned by an espionage organization or by its agent;
- (3) stealing, secretly gathering, buying, or unlawfully providing State secrets;
- (4) instigating, luring or bribing a State functionary to turn traitor; and,
- (5) committing any other act of sabotage endangering State security.

Article 5 The State shall protect organizations and individuals that have rendered support or assistance in safeguarding State security, and reward those who have made significant contributions to the maintenance of State security.

## Chapter II Functions and Powers of the State Security Organs in the Work of State Security

Article 6 The State security organs shall exercise, in the work of State security, the functions and powers of investigation, detention, preliminary examination and execution of arrest according to law and other functions and powers as stipulated by the law.

Article 7 Any functionary of a State security organ, when carrying out according to law a task for State security and upon producing an appropriate certificate, shall have the right to examine the identification certificate of any Chinese citizen or any person from outside the territory of the People's Republic of China; and shall have the right to investigate or inquire about relevant matters from any organization or individual concerned.

Article 8 Any functionary of a State security organ may, when carrying out a task for State security, enter any interested site upon producing an appropriate certificate, and may, in accordance with the relevant provisions of the State, with approval and upon producing an appropriate certificate, enter interested restricted areas, sites or units; and may have access to related files, materials and articles for examination.

Article 9 Any functionary of a State security organ may, when carrying out an urgent task according to law, have the priority in taking means of public transport upon producing an appropriate certificate, and have the right of way in case of a traffic block.

As necessitated by the maintenance of State security, a State security organ may, when necessary and in accordance with the relevant provisions of the State, have priority in use of any means of transport or communication, site or building belonging to any organ, organization, enterprise, institution or individual, and shall make a timely return after the use and pay an appropriate fee, and, in case of any damage or loss, shall make compensation therefor.

Article 10 Where the reconnaissance of an act endangering State security requires, a State security organ may, in accordance with the relevant provisions of the State and after going through strict approval procedures, employ technological means of reconnaissance.

Article 11 Where State security requires, a State security organ may inspect the electronic communication instruments and appliances and other similar equipment and installations belonging to any organization or individual.

Article 12 Where State security requires, a State security organ may, in accordance with the relevant provisions of the State, request such inspecting organs as the Customs and the frontier inspection stations to exempt the personnel, materials and equipment concerned from inspection. The relevant inspecting organs shall give assistance thereto.

Article 13 State security organs and their functionaries, in their work of State security, shall act strictly according to law, and refrain from overstepping or abusing their powers and infringing upon the lawful rights and interests of any organization or individual.

Article 14 The performance of duty according to law by functionaries of the State security organs shall be protected by law.

### Chapter III Duties and Rights of Citizens and Organizations in Safeguarding State Security

Article 15 State organs, organizations and other institutions shall educate their personnel with regard to the maintenance of State security, mobilize and organize them to prevent and check acts endangering State security.

Article 16 Citizens and organizations shall provide convenience or other assistance for the work of State security.

Article 17 Any citizen who finds any act endangering State security shall without delay report it directly or through his work unit to a State security organ or a public security organ.

Article 18 When a State security organ investigates and finds out any circumstances endangering State security and gathers related evidence, citizens and organizations concerned shall faithfully furnish it with relevant information and may not refuse to do so.

Article 19 Any citizen or organization shall keep confidential the State secrets that have come to his knowledge or its possession regarding State security.

Article 20 No individual or organization may unlawfully hold any document, material or other articles classified as State secrets.

Article 21 No individual or organization may unlawfully hold or use any specialized espionage equipment or devices such as those for eavesdropping or secret photographing.

Article 22 Any citizen or organization shall have the right to make to the State security organ at a higher level or to a relevant department exposure of or charge against the excess or abuse of power or other unlawful acts committed by a State security organ or its functionaries. The State security organ at the higher level or the relevant department shall ascertain the facts without delay and be responsible for the handling thereof.

No one may suppress or retaliate against any citizen or organization that has assisted a State security organ in its work or made reports or charges according to law.

#### Chapter IV Legal Liability

Article 23 Where the acts endangering State security committed by institutions, organizations or individuals outside the territory of the People's Republic of China or committed by other persons under the instigation or financial support of the said institutions, organizations or individuals, or committed by institutions or individuals within the territory of the People's Republic of China in collusion with institutions, organizations or individuals outside the territory constitute crimes, such institutions, organizations or individuals shall be investigated for criminal responsibility according to law.

Article 24 Anyone who, guilty of a crime of espionage, voluntarily surrenders himself or has performed meritorious service may be given a lighter or a mitigated punishment or be exempted from punishment; and any such person who has performed significant meritorious service may be awarded.

Article 25 Anyone who is compelled or induced to join a hostile organization and engaged in activities outside the territory endangering the State security of the People's Republic of China has made a faithful and timely report about the situation to an organ of the People's Republic of China stationed abroad, or after returning to the country, has made a faithful and timely report about the situation directly or through his unit to a State security organ or a public security organ shall not be prosecuted.

Article 26 Whoever, well aware of other persons' criminal acts of espionage, refuses to provide information while a State security organ investigates the circumstances or collects evidence from him shall be punished with administrative sanctions by his unit or the competent department at a higher level, or given a detention of not more than 15 days by the State security organ; in case the circumstances are serious, the offender shall be punished by applying mutatis mutandis the provisions of Article 162 of the Criminal Law.

Article 27 Whoever, by means of violence or threat, obstructs a State security organ from carrying out an assignment of State security according to law shall be punished in accordance with the provisions of Article 157 of the Criminal Law. Whoever intentionally obstructs a State security organ from carrying out an assignment of State security according to law without resort to violence or threat but causes serious consequences shall be punished by applying mutatis mutandis the provisions of Article 157 of the Criminal Law; in case the circumstances are not serious, the offender shall be given a detention of not more than 15 days by the State security organ.

Article 28 Whoever intentionally or negligently divulges State secrets concerning State security shall be given a detention of not more than 15 days by the State security organ; in case the offence constitutes a crime, the offender shall be investigated for criminal responsibility according to law.

Article 29 A State security organ may search the body, articles, residence and other related places of anyone who unlawfully holds documents, materials or other articles classified as State secrets, or who unlawfully holds or uses equipment and materials specially for espionage purposes, and may confiscate such documents, materials and other articles, as well as such equipment and materials.

Anyone who unlawfully holds documents, materials or other articles classified as State secrets and constitutes the crime of divulging State secrets shall be investigated for criminal responsibility according to law.

Article 30 If the violators of this Law are from outside the territory of the People's Republic of China, they may be ordered to leave the country within a specified time limit or be deported.

Article 31 Any party concerned, if not satisfied with the detention decision, may apply for reconsideration within 15 days after receipt of the decision to the organ at the next higher level over the one that has made the decision; and if still not satisfied with the reconsideration decision, the party concerned may bring a suit in a people's court within 15 days after receipt of the reconsideration decision.

Article 32 Any State security functionary who neglects his duty or engages in malpractices for personal interests, if the offence constitutes a crime, shall be punished in accordance with the provisions of Article 187 or Article 188 of the Criminal Law; Any such person who practises unlawful detention or extorts a confession by torture, if the offence constitutes a crime, shall be punished respectively in accordance with the provisions of Article 143 or Article 136 of the Criminal Law.

## Chapter V Supplementary Provisions

Article 33 Any public security organ that carries out an assignment of State security according to the provisions of Paragraph 2, Article 2 of this Law shall be governed by the relevant provisions of this Law.

Article 34 This Law shall go into effect as of the date of promulgation.

## **Legislation Law of the People's Republic of China**

Adopted at the third Session of the Ninth National People's Congress on March 15, 2000 and promulgated by Order No. 31 of the President of the People's Republic of China on March 15, 2000

### Contents

#### Chapter I General Provisions

#### Chapter II Laws

##### Section 1 Limits of Legislative Power

##### Section 2 Legislation Procedures for the National People's Congress

##### Section 3 Legislation Procedures for the Standing Committee of the National People's Congress

##### Section 4 Legal Interpretation

##### Section 5 Other Provisions

#### Chapter III Administrative Regulations

#### Chapter IV Local Regulations, Autonomous Regulations, Separate Regulations and Rules

##### Section 1 Local Regulations, Autonomous Regulations and Separate Regulations

##### Section 2 Rules

#### Chapter V Application and Record

#### Chapter VI Supplementary Provisions

#### Chapter I General Provisions

Article 1 This Law is enacted in accordance with the Constitution with a view to standardizing legislation, establishing a sound legislative system of the State, establishing and improving the socialist legal system with Chinese characteristics, safeguarding and developing socialist democracy, promoting the government of the country according to law and building a socialist country under the rule of law.

Article 2 This Law shall be applicable to the enactment, revision and nullification of laws, administrative regulations, local regulations, autonomous regulations and separate regulations.

The rules of the departments under the State Council and of the local governments shall be formulated, revised and nullified in accordance with the relevant provisions of this Law.

Article 3 Laws shall be made in compliance with the basic principles laid down in the Constitution, principles of taking economic development as the central task, adhering to the socialist road and the people's democratic dictatorship, upholding leadership by the Communist Party of China, upholding Marxism-Leninism, Mao Zetong Thought and Deng Xiaoping theory and persevering in reform and in opening to the outside world.

Article 4 Laws shall be made in accordance with the statutory limits of power and procedures, on the basis of the overall interests of the State and for the purpose of safeguarding the uniformity and dignity of the socialist legal system.

Article 5 Laws shall be made in order to embody the will of the people, enhance socialist democracy and guarantee that the people participate in legislative activities through various channels.

Article 6 Law shall be made by proceeding from reality and scientifically and rationally prescribing the rights and duties of citizens, legal persons and other organizations, and the powers and responsibilities of State organs.

## Chapter II Laws

### Section 1 Limits of Legislative Power

Article 7 The National People's Congress and its Standing Committee exercise the legislative power of the State.

The National People's Congress enacts and amends basic laws governing criminal offences, civil affairs, the State organs and other matters.

The Standing Committee of the National People's Congress enacts and amends laws other than the ones to be enacted by the National People's Congress, and when the National People's Congress is not in session, partially supplements and amends laws enacted by the National People's Congress, but not in contradiction to the basic principles of such laws.

Article 8 The following affairs shall only be governed by law:

(1) affairs concerning State sovereignty;

(2) formation, organization, and the functions and powers of the people's congresses, the people's governments, the people's courts and the people's procuratorates at all levels;

(3) the system of regional national autonomy, the system of special administrative region, the system of self-government among people at the grassroots level;



- (4) criminal offences and their punishment;
- (5) mandatory measures and penalties involving deprivation of citizens of their political rights or restriction of the freedom of their person;
- (6) requisition of non-State-owned property;
- (7) basic civil system;
- (8) basic economic system and basic systems of finance, taxation, customs, banking and foreign trade;
- (9) systems of litigation and arbitration; and
- (10) other affairs on which laws must be made by the National People's Congress or its Standing Committee.

Article 9 If laws have not been enacted on the affairs specified in Article 8 of this Law, the National People's Congress or its Standing Committee has the power to make a decision to authorize the State Council to formulate, according to actual needs, administrative regulations first on part of those affairs, except for the affairs concerning criminal offences and their punishment, mandatory measures and penalties involving deprivation of citizens of their political rights or restriction of the freedom of their person, and the judicial system.

Article 10 In a decision on authorization, the purpose and scope of the authorization shall be clearly defined.

The authorization organ shall exercise the power strictly in compliance with the authorized purpose and scope.

The authorized organ may not impart the authorized power to any other organs.

Article 11 After the administrative regulations on an affair formulated under authorization have been tested in practice and when the conditions are ripe for making a law on the affair, the National People's Congress or its Standing Committee shall make a law on it in a timely manner. As soon as the law is made, the authorization with regard to that matter shall be terminated accordingly.

## Section 2 Legislation Procedures for the National People's Congress

Article 12 The Presidium of the National People's Congress may submit to the National People's Congress legislative bills, which shall be deliberated by the session of the National People's Congress.

The Standing Committee of the National People's Congress, the State Council, the Central Military Commission, the Supreme People's Court, the Supreme People's Procuratorate and the special committees of the National People's Congress may submit to the National People's Congress legislative bills, which shall be put on the agenda of a session by decision of the Presidium.

Article 13 A delegation or a group of thirty or more deputies may submit a legislative bill to the National People's Congress. The Presidium shall decide whether or not to put it on the agenda of the session, or shall refer do so after referring the bill to a relevant special committee for deliberation and for making a proposal as to whether to put it on the agenda.

When the special committee holds a meeting to deliberate the bill, it may invite the sponsoring person to attend the meeting and express opinions.

Article 14 A legislative bill to be submitted to the National People's Congress may be submitted first to the Standing Committee when the National People's Congress is not in session, and after the Standing Committee has deliberated on it at its meetings in accordance with the procedures stipulated in Section 3 of Chapter II of this Law and decides to submit it to the National People's Congress for deliberation, the Standing Committee or the sponsor shall make explanations to a plenary meeting of the session.

Article 15 When the Standing Committee decides to submit a legislative bill to a session of the National People's Congress for deliberation, it shall distribute the draft bill to the deputies one month before the session is convoked.

Article 16 The legislative bill that has been placed on the agenda of a session of the National People's Congress shall be deliberated on by all the delegations after the explanation made by the sponsor has been heard at a plenary meeting of the session.

When the delegations are deliberating on a legislative bill, the sponsor shall send people to listen to their opinions and answer inquiries.

When the delegations are deliberating on a legislative bill, the relevant organ or organization shall, at the request of the delegations, send people to give briefings therefor.

Article 17 The legislative bill that has been placed on the agenda of a session of the National People's Congress shall be deliberated by the relevant special committee which shall submit its deliberated opinions to the Presidium, and the opinions shall also be printed and distributed at the session.

Article 18 The legislative bill that has been placed on the agenda of a session of the National People's Congress shall be subject to a unified deliberation by its Law Committee on the basis of the deliberated opinions of the various delegations and the relevant special committee. The Law Committee shall submit to the Presidium a report on the result of its deliberation and a revised draft law; major dissenting views shall be stated in the report. After examination and approval by the Presidium, the report and the draft law shall be printed and distributed at the session.

Article 19 With regard to a legislative bill that has been placed on the agenda of a session of the National People's Congress, the executive chairmen of the Presidium may, when necessary, convene a meeting of the heads of the various delegations to hear and discuss the deliberated opinions of the delegations on major questions in the legislative bill, and report the result of the discussion and the opinions expressed to the Presidium.

The executive chairmen of the Presidium may also convene a meeting of the interested deputies recommended by the delegations to discuss the major, special questions in the legislative bill, and report the result of the discussion and the opinions expressed to the Presidium.

Article 20 With regard to a legislative bill that has been placed on the agenda of a session of the National People's Congress, if the sponsor requests its withdrawal before it is put to vote, he shall state the reasons, and deliberation of the bill at the session shall terminate as soon as the Presidium has accepted the request and reported the matter to the session.

Article 21 Where important questions raised during the deliberation on a legislative bill call for further study, the Congress may, by decision of a plenary meeting according to a proposal made by the Presidium, authorize the Standing Committee to further deliberate on the bill on the basis of deputies' opinions, to make a decision and to give a report on the decision to the next session of the National People's Congress; or the Standing Committee may be authorized to further deliberate on the bill on the basis of deputies' opinions, to work out a revision proposal and to submit it to the next session of the National People's Congress for deliberation and decision.

Article 22 After a revised draft of the legislative bill has been deliberated on by the various delegations, the Law Committee shall revise revised draft according to the deliberated opinions of the delegations and prepare a draft for vote, the Presidium shall submit it for vote to a plenary meeting of the session, and the draft shall be subject to adoption by a simple majority of all the deputies.

Article 23 A law adopted by the National People's Congress shall be promulgated by Order of the President signed by the President of the People's Republic of China.

### Section 3 Legislation Procedures for the Standing Committee of the National People's Congress

Article 24 The Council of Chairmen may submit legislative bills to a meeting of the Standing Committee for deliberation.

The State Council, the Central Military Commission, the Supreme People's Court, the Supreme People's Procuratorate or a special committee of the National People's Congress may submit a legislative bill to the Standing Committee, and the Council of Chairmen shall decide whether to put it on the agenda of a meeting of the Standing Committee or to refer it first to the relevant special committee for deliberation before deciding whether to put it on the agenda of a meeting of the Standing Committee in light of the report submitted by the relevant special committee. If the Council of Chairmen believes that the legislative bill contains major questions calling for further study, it may advise the sponsor of the bill to revise and improve the bill before submitting it to the Standing Committee.

Article 25 Ten or more of the members of the Standing Committee may jointly submit a legislative bill to the Standing Committee, and the Council of Chairmen shall decide whether to put it on the agenda of a meeting of the Standing Committee, or to refer it first to the relevant special committee for deliberation before deciding whether to put it on the agenda of a meeting of the Standing Committee in light of the suggestions as to whether to put it on the agenda submitted by the relevant special committee. If the Council of Chairmen decides not to put the legislative bill on the

agenda of a meeting of the Standing Committee, it shall report the matter to a meeting of the Standing Committee or give an explanation to the sponsor.

When a special committee holds a meeting to deliberate on a bill, the sponsor may be invited to attend the meeting and express opinions.

Article 26 When a legislative bill is placed on the agenda of a meeting of the Standing Committee, its draft shall, except under special circumstances, be delivered to the component members of the Standing Committee seven days before the meeting.

Article 27 As a rule, a legislative bill placed on the agenda of a meeting of the Standing Committee shall be put to vote after deliberations at three meetings of the Standing Committee.

When the Standing Committee is to deliberate on a legislative bill for the first time, it shall hear the explanation made by the sponsor at a plenary meeting, and then preliminary deliberation shall be conducted at group meetings.

When the Standing Committee is to deliberate on a legislative bill for the second time, it shall hear the report made by the Law Committee on the revision of the draft and the main problems thereof at a plenary meeting, and then further deliberation shall be conducted at group meetings.

When the Standing Committee is to deliberate on a legislative bill for the third time, it shall hear the report made by the Law Committee on the result of its deliberation on the draft at a plenary meeting, and then the revised draft of the legislative bill be deliberated on at group meetings.

When the Standing Committee is to deliberate on a legislative bill, it may, according to needs, convene joint group meetings or plenary meetings to discuss the main questions contained in the draft.

Article 28 If the various quarters have a consensus in the main on a legislative bill placed on the agenda of a meeting of the Standing Committee, the bill may be put to vote after deliberation at two meetings of the Standing Committee; if the various quarters have a consensus in the main on a legislative bill concerning partial amendment of a law, the bill may be put to vote after deliberated at one meeting only.

Article 29 When group meetings of the Standing Committee are held to deliberate on a legislative bill, the sponsor shall send people to listen to opinions and answer inquiries.

When group meetings of the Standing Committee are held to deliberate on a legislative bill, the relevant organ or organization shall, at the request of any group, send people to give briefings thereof.

Article 30 The legislative bill placed on the agenda of a meeting of the Standing Committee shall be deliberated by the relevant special committee, which shall offer its opinions after deliberation and have them printed and distributed at the Standing Committee meeting.

When a special committee holds a meeting to deliberate on a legislative bill, members of other relevant special committees may be invited to attend the meeting and express opinions.

Article 31 With regard to a legislative bill placed on the agenda of a Standing Committee meeting, the Law Committee shall conduct a unified deliberation on the basis of the opinions expressed by members of the Standing Committee and relevant special committees after deliberation as well as the opinions offered by the various quarters, work out a revision report or a report on the result of its deliberation and a revised draft of the legislative bill, and state the major dissenting view in either of the two reports. It shall give feedback to the relevant special committees if their deliberated opinions of importance are not accepted.

When the Law Committee holds a meeting to deliberate on a legislative bill, members of other relevant special committees may be invited to attend the meeting and express opinions.

Article 32 When a special committee is to deliberate on a legislative bill, it shall hold a plenary meeting and may, in light of need, request the relevant organ or organization to send the leading members concerned to make explanation.

Article 33 Where the special committees disagree on major questions contained in a draft law, the matter shall be reported to the Council of Chairmen.

Article 34 With regard to a legislative bill placed on the agenda of a Standing Committee meeting, the Law Committee, the relevant special committee and the working offices of the Standing Committee shall listen to opinions of the various quarters by holding forums, seminars, hearings, etc.

The working offices of the Standing Committee shall send copies of the draft law to the relevant organs, organizations and specialists to solicit their opinions and then sort out the opinions and submit them to the Law Committee and the relevant special committee and, where necessary, print and distribute them at a meeting of the Standing Committee.

Article 35 With regard to a legislative bill placed on the agenda of a Standing Committee meeting, it may, by decision of the Council of Chairmen, be published for soliciting opinions. Opinions gathered from the organs, organizations and citizens shall be sent to the working offices of the Standing Committee.

Article 36 With regard to a legislative bill placed on the agenda of a meeting of the Standing Committee, its working offices shall collect and sort out the deliberated opinions from group meetings and the opinions offered by the various quarters as well as other relevant information, and then send them to the Law Committee and the relevant special committee and, where necessary, print and distribute them at a meeting of the Standing Committee.

Article 37 With regard to a legislative bill placed on the agenda of a meeting of the Standing Committee, if the sponsor requests its withdrawal before it is put to vote, he shall state the reasons, and deliberation of the bill at the meeting shall terminate as soon as the Council of Chairmen has accepted the request and reported the matter to the Standing Committee.

Article 38 Where a legislative bill has been deliberated on by the Standing Committee at three meetings and there are still major questions calling for further study, the Council of Chairmen may propose, provided with the consent of a joint group meeting or a plenary meeting, not to put the

bill to vote for the time being, and refer it to the Law Committee and the relevant committee for further deliberation.

Article 39 Where the deliberation of a legislative bill has been laid aside for two full years owing to significant disagreement among the various quarters on the necessity and feasibility of making the bill into a law, or where a legislative bill that has been proposed not to be put to vote for the time being has failed to be placed again on the agenda of a meeting of the Standing Committee for deliberation within two years, the Council of Chairmen shall report the matter to the Standing Committee and deliberation on the said bill shall terminate.

Article 40 After the revised draft of a law has been deliberated by the Standing Committee at its meeting, the Law Committee shall further revise it on the basis of the deliberated opinions of the members of the Standing Committee before preparing a draft for vote; then, the Council of Chairmen shall request the Standing Committee to put the draft to vote at a plenary meeting, and the draft shall be subject to adoption by a simple majority of the total membership of the Standing Committee.

Article 41 A law adopted by the Standing Committee shall be promulgated by Order of the President signed by the president of the People's Republic of China.

#### Section 4 Legal Interpretation

Article 42 The power of legal interpretation belongs to the Standing Committee of the National People's Congress.

A law shall be interpreted by the Standing Committee of the National People's Congress if:

- (1) the specific meaning of a provision needs to be further defined; or
- (2) after its enactment, new developments make it necessary to define the basis on which to apply the law.

Article 43 The State Council, the Central Military Commission, the Supreme People's Court, the Supreme People's Procuratorate, a special committee of the National People's Congress and the standing committee of the people's congress of a province, autonomous region or municipality directly under the Central Government may request the Standing Committee of the National People's Congress to give legal interpretation.

Article 44 The working offices of the Standing Committee shall study and work out a draft for the legal interpretation, which shall be put on the agenda of the Standing Committee meeting by decision of the Council of Chairmen.

Article 45 After a draft for legal interpretation has been deliberated by the Standing Committee at its meeting, the Law Committee shall, on the basis of the deliberated opinions of members of the Standing Committee, deliberate on the draft and revise it before working out a draft legal interpretation for vote.

Article 46 The draft legal interpretation for vote shall be subject to adoption by a simple majority of the total membership of the Standing Committee and be promulgated by the Standing Committee in an announcement.

Article 47 The legal interpretation adopted by the Standing Committee of the National People's Congress has the same effect as the laws enacted by it.

#### Section 5 Other Provisions

Article 48 When a legislative bill is submitted, a version of the draft law, its explanation and other necessary information shall be provided at the same time. The explanation on the draft law shall cover the necessity of its enactment and its main contents.

Article 49 With regard to a legislative bill submitted to the National People's Congress or its Standing Committee, the sponsor has the right to withdraw it before it is put on the agenda of a Congress session or Committee meeting.

Article 50 With regard to a legislative bill that has failed to pass the vote at a plenary meeting of the National People's Congress or its Standing Committee, if the sponsor still considers it necessary to enact the proposed law, he may submit the bill anew in accordance with the statutory procedures, and the Presidium or the Council of Chairmen shall decide whether to put it on the agenda of a session of the Congress or a meeting of the Standing Committee; for a bill that has failed to be adopted by the National People's Congress, the case shall be referred to the National People's Congress for deliberation and decision.

Article 51 In a law, the time for its entry into effect shall be clearly stipulated.

Article 52 In an Order of the President signed for promulgating a law, the organ that enacts the law, the date of its adoption and the time for its entry into effect shall be clearly stated.

Once a law is promulgated upon signing, it shall be published in the Bulletin of the Standing Committee of the National People's Congress and in the newspapers with a nationwide distribution.

The text of a law published in the Bulletin of the Standing Committee shall be the standard text.

Article 53 The procedures for revising or nullifying a law shall be governed by the relevant provisions in this Chapter.

Where only part of the articles of a law are revised or nullified, the new text of the law must be promulgated.

Article 54 According to the need of the contents, a law may consist of parts, chapters, sections, articles, paragraphs, subparagraphs and items.

The sequence of the different parts, chapters, sections and articles shall be marked in the order of Chinese numerals, the sequence of the paragraphs shall not be marked, that of subparagraphs shall be marked in the order of bracketed Chinese numerals and that of items marked with Arabic numerals.

In the note to the title of a law, the organ that enacts the law and the date of adoption shall be clearly stated.

Article 55 The working offices of the Standing Committee of the National People's Congress may reply, after study, to any legal inquiries regarding specific questions and shall report thereon to the Standing Committee for the record.

### Chapter III Administrative Regulations

Article 56 The State Council shall, in accordance with the Constitution and laws, formulate administrative regulations.

The administrative regulations may be formulated to govern the following matters:

- (1) matters requiring the formulation of administrative regulations in order to implement the provisions of law; and
- (2) matters within the administrative functions and powers of the State Council as provided for in Article 89 of the Constitution.

When the administrative regulations governing an affair which has been formulated first by the State Council under authorization decided on by the National People's Congress or its Standing Committee, an affair on which the National People's Congress or its Standing Committee is responsible to make a law, have been tested in practice and when the conditions are ripe for making a law on the affair, the State Council shall, in a timely manner, request the National People's Congress or its Standing Committee to make the law.

Article 57 The drafting of administrative regulations shall be arranged by the State Council. Where a relevant department under the State Council considers it necessary to formulate administrative regulations to govern a matter, it shall apply to the State Council for including the matter in its legislation list.

Article 58 In drafting administrative regulations, opinions from relevant organs, organizations and citizens shall be widely listened to, and forums, seminars, hearings, etc. may be held for the purpose.

Article 59 When the drafting of the administrative regulations is completed, the drafting unit shall submit the draft, its explanation, differing opinions from the various quarters on major questions in the draft and other relevant information to the legislative affairs department under the State Council for examination.

The legislative affairs department under the State Council shall submit an examination report and a revised draft to the State Council and in its examination report explain the major questions in the draft.



Article 60 The decision-making procedures for administrative regulations shall comply with the relevant provisions in the Organic Law of the State Council of the People's Republic of China.

Article 61 Administrative regulations shall be promulgated by Order of the State Council signed by the Premier of the State Council.

Article 62 After promulgation upon signing, the administrative regulations shall immediately be published in the Bulletin of the State Council and in newspapers with a nationwide distribution.

The text of the administrative regulations published in the Bulletin of the State Council shall be the standard text.

## Chapter IV Local Regulations, Autonomous Regulations, Separate Regulations, and Rules

### Section 1 Local Regulations, Autonomous Regulations and Separate Regulations

Article 63 The people's congresses or their standing committees of the provinces, autonomous regions and municipalities directly under the Central Government may, in light of the specific conditions and actual needs of their respective administrative areas, formulate local regulations, provided that such regulations do not contradict the Constitution, the laws and the administrative regulations.

The people's congresses or their standing committees of the comparatively larger cities may, in light of the specific local conditions and actual needs, formulate local regulations, provided that they do not contradict the Constitution, the laws, the administrative regulations and the local regulations of their respective provinces or autonomous regions, and they shall submit the regulations to the standing committees of the people's congresses of the provinces or autonomous regions for approval before implementation. The standing committees of the people's congresses of the provinces or autonomous regions shall examine the legality of such local regulations which are submitted for approval, and shall approve them within four months if they do not contradict the Constitution, the laws, the administrative regulations, and the local regulations of their respective provinces or autonomous regions.

When the standing committee of the people's congress of a province or autonomous region examines the local regulations of a comparatively larger city submitted for approval, it shall make a decision to deal with the matter if it finds that the said regulations contradict the rules of the people's government of the province or autonomous region.

A "comparatively larger city" used in this Law refers to a city where a provincial or autonomous regional people's government is located or where a special economic zone is located, or a city approved as such by the State Council.

Article 64 Local regulations may be formulated to govern the following matters:

(1) matters requiring the formulation of specific provisions in light of the actual conditions of an respective administrative area for implementing the provisions of laws or administrative regulations; and

(2) matters of local character that require the formulation of local regulations.

Except for the affairs provided for in Article 8 of this Law, the provinces, autonomous regions, municipalities directly under the Central Government and the comparatively larger cities may, in light of the specific local conditions and actual needs, first formulate local regulations on all other affairs for which the State has not yet formulated any laws or administrative regulations. Once the laws or administrative regulations formulated on such matters by the State come into effect, the provisions in local regulations which contradict the said laws or administrative regulations shall be null or void, and the organs that have formulated such regulations shall promptly amend or annul the provisions.

Article 65 The people's congresses or their standing committees of the provinces and cities where special economic zones are located may, upon authorization by decision of the National People's Congress, formulate regulations and enforce them within the limits of the special economic zones.

Article 66 The people's congresses of the national autonomous areas have the power to formulate autonomous regulations and separate regulations on the basis of the political, economic and cultural characteristics of the local nationality(nationalities). The autonomous regulations and separate regulations of the autonomous regions shall be submitted to the Standing Committee of the National People's Congress for approval and shall go into effect upon approval. The autonomous regulations and separate regulations of the autonomous prefectures or counties shall be submitted to the standing committees of the people's congresses of the relevant provinces, autonomous regions or municipalities directly under the Central Government for approval and shall go into effect upon approval.

Where certain provisions of the laws and administrative regulations are concerned, adaptation on the basis of the characteristics of the local nationality (nationalities) may be made in autonomous regulations and separate regulations, but such adaptation may not contradict the basis principles of the laws and administrative regulations; where the provisions of the Constitution and the Law on Regional National Autonomy as well as the provisions in other laws and administrative regulations specially formulated to govern the national autonomous areas are concerned, no adaptation may be made.

Article 67 Local regulations governing especially important matters of an administrative area shall be subject to adoption by the people's congress of the area.

Article 68 The procedures for submission, deliberation and voting of bills of local regulations, autonomous regulations or separate regulations shall be enacted by the people's congress at the corresponding level in accordance with the Organic Law of the People's Republic of China on Local People's Congresses and Local People's Governments and with reference to the provisions of Sections 2, 3 and 5 in Chapter II of this Law.

The organ in charge of unified deliberation of a draft of local regulations shall prepare a report on the result of its a conclusive report on deliberation and a revised draft of the regulations.

Article 69 Local regulations formulated by the people's congress of a province, autonomous region or municipality directly under the Central Government shall be promulgated by the presidium of the congress in an announcement.

Local regulations formulated by the standing committee of the people's congress of a province, autonomous region or municipality directly under the Central Government shall be promulgated by the standing committee in an announcement.

Local regulations formulated by the people's congress or its standing committee of a comparatively larger city shall, upon approval, be promulgated by the standing committee of the people's congress of the city in an announcement.

Autonomous regulations or separate regulations shall, upon approval, be promulgated by the standing committee of the local people's congress of the autonomous region, autonomous prefecture or autonomous county in an announcement.

Article 70 Once local regulations or autonomous regulations and separate regulations of an autonomous region are promulgated, they shall be published in the gazette of the standing committee of the local people's congress and in newspapers distributed within the administrative area.

The text of local regulations or autonomous regulations and separate regulations published in the gazette of the standing committee of the people's congress shall be the standard text.

## Section 2 Rules

Article 71 The ministries and commissions of the State Council, the People's Bank of China, the State Audit Administration as well as the other organs endowed with administrative functions directly under the State Council may, in accordance with the laws as well as the administrative regulations, decisions and orders of the State Council and within the limits of their power, formulate rules.

Matters governed by the rules of departments shall be those for the enforcement of the laws or the administrative regulations, decisions and orders of the State Council.

Article 72 With regard to a matter that falls within the limits of power of two or more departments under the State Council, the State Council shall be requested to formulate administrative regulations, or the departments concerned under the State Council shall jointly formulate rules.

Article 73 The people's governments of the provinces, autonomous regions, municipalities directly under the Central Government and the comparatively larger cities may, in accordance with laws and administrative regulations and the local regulations of their respective province, autonomous regions or municipalities, formulate rules.

Local governments may formulate rules to govern the following matters:

(1) matters requiring the formulation of rules to implement the provisions of laws, administrative regulations and local regulations; and

(2) specific administrative matters pertaining to their respective administrative areas.

Article 74 The procedures for formulating the rules of departments under the State Council and rules of local governments shall be enacted by the State Council with reference to the provisions in Chapter III of this Law.

Article 75 The Rules of departments shall be subject to decision by the executive meetings of ministries or meetings of commissions.

The rules of local governments shall be subject to decision by the executive meetings or plenary meetings of the respective governments.

Article 76 The rules of departments shall be promulgated by orders signed by the heads of the departments.

The rules of local governments shall be promulgated by orders signed by governors of provinces, chairmen of autonomous regions or mayors.

Article 77 the rules of departments shall, upon promulgation by signed orders, be promptly published in the gazette of the State Council or gazettes of the departments and in newspapers with a nationwide distribution.

The rules of local governments shall, upon promulgation by signed orders, be promptly published in gazettes of the local people's governments and in newspapers distributed within their respective administrative areas.

The text of rules published in the gazette of the State Council or of the department and in the gazette of the local people's government shall be the standard text.

## Chapter V Application and Record

Article 78 The legal effect of the Constitution is the highest, and no laws, administrative regulations, local regulations, autonomous regulations, separate regulations or rules whatever may contradict it.

Article 79 The effect of laws is higher than that of administrative regulations, local regulations, and rules.

The effect of administrative regulations is higher than that of local regulations, and rules.

Article 80 The effect of local regulations is higher than that of the rules of the local governments at or below the corresponding level.

The effect of the rules formulated by the people's governments of the provinces or autonomous regions is higher than that of the rules formulated by the people's governments of the comparatively larger cities within the administrative areas of the provinces and autonomous regions.

Article 81 Where in autonomous regulations or separate regulations provisions are formulated in accordance with law to make adaptations with regard to certain provisions of laws, administrative regulations or local regulations, the provisions of the autonomous regulations or separate regulations shall apply in the autonomous areas concerned.

Where regulations of special economic zones are formulated, upon authorization, to make adaptations with regard to certain provisions of laws, administrative regulations or local regulations, the provisions of the regulations of special economic zones shall apply in the special economic zones concerned.

Article 82 The effect of the rules of different departments is equal between the departments, and the effect of the rules of departments and of the rules of local governments is equal between the departments and local governments; their application shall be confined to their respective limits of authority.

Article 83 With regard to laws, administrative regulations, local regulations, autonomous regulations, separate regulations or rules, if they are formulated by one and same organ and if there is inconsistency between special provisions and general provisions, the special provisions shall prevail; if there is inconsistency between the new provisions and the old provisions, the new provisions shall prevail.

Article 84 Laws, administrative regulations, local regulations, autonomous regulations, separate regulations and rules shall not be retroactive, but the regulations formulated specially for the purpose of better protecting the rights and interests of citizens, legal persons and other organizations are excepted.

Article 85 Where there is inconsistency between the new general provisions and the old special provisions in different laws governing one and the same matter and it is hard to decide which provisions shall prevail, a ruling shall be made by the Standing Committee of the National People's Congress.

Where there is inconsistency between the new general provisions and the old special provisions in different administrative regulations governing one and the same matter and it is hard to decide which provisions shall prevail, a ruling shall be made by the State Council.

Article 86 Where there is inconsistency between local regulations and rules, a ruling shall be made by the organ concerned according to the limits of power prescribed below:

- (1) Where there is inconsistency between the new general provisions and the old special provisions formulated by one and the same organ, the said organ shall make a ruling;
- (2) Where there is inconsistency between the provisions of local regulations and those of the rules of departments governing one and same matter and it is hard to decide which provisions shall

prevail, the State Council shall make a decision; if it considers that the provisions of the local regulations should be applied, it shall decide that the provisions of the local regulations be applied in the locality concerned; if it considers that the rules of departments should be applied, the case shall be submitted to the Standing Committee of the National People's Congress for a ruling; and

(3) Where there is inconsistency between the provisions in the rules of different departments or between the provisions in the rules of the departments and those in the rules of local governments governing one and the same matter, the State Council shall make a ruling.

Where there is inconsistency between the regulations formulated upon authorization and the provisions of laws and it is hard to decide which shall prevail, the Standing Committee of the National People's Congress shall make a ruling.

Article 87 Under any of the following circumstances, laws, administrative regulations, local regulations, autonomous regulations, separate regulations or rules shall be altered or annulled by the organ concerned in accordance with the limits of power prescribed in Article 88 of this Law:

(1) where the limits of power are transcended;

(2) where provisions of the legislation of lower levels contravene those of the legislation of upper levels;

(3) where, because of inconsistency between the provisions of different rules governing one and the same matter, it is ruled that the provisions of one side be altered or annulled;

(4) where the provisions of rules are considered inappropriate and should therefore be altered or annulled; or

(5) where legal procedures are violated.

Article 88 The limits of power for altering or annulling laws, administrative regulations, local regulations, autonomous regulations, separate regulations or rules are as follows:

(1) The National People's Congress has the power to alter or annul any inappropriate laws enacted by its Standing Committee, and to annul any autonomous regulations or separate regulations which have been approved by its Standing Committee but which contravene the Constitution or the provision of the second paragraph in Article 66 of this Law;

(2) The Standing Committee of the National People's Congress has the power to annul any administrative regulations which contradict the Constitution and laws, to annul any local regulations which contradict the Constitution, laws or administrative regulations, and to annul any autonomous regulations or separate regulations which have been approved by the standing committees of the people's congresses of the relevant provinces, autonomous regions or municipalities directly under the Central Government but which contravene the Constitution or the provision of the second paragraph in Article 66 of this Law;

(3) The State Council has the power to alter or annul any inappropriate rules of the departments and of local governments;

- (4) The people's congress of a province, autonomous region or municipality directly under the Central Government has the power to alter or annul any inappropriate local regulations formulated or approved by its standing committee;
- (5) The standing committee of a local people's congress has the power to annul any inappropriate rules formulated by the people's government at the same level;
- (6) The people's government of a province or autonomous region has the power to alter or annul any inappropriate rules formulated by people's governments at the next lower level; and
- (7) The authorizing organ has the power to annul any of the regulations formulated by an authorized organ that transcends the authorized limits of power or contravenes the authorized purpose, and when necessary, may revoke the authorization.

Article 89 Administrative regulations, local regulations, autonomous regulations, separate regulations and rules shall, within 30 days from the date of promulgation, be reported to the organ concerned for the record in accordance with the following provisions:

- (1) Administrative regulations shall be reported to the Standing Committee of the National People's Congress for the record;
- (2) Local regulations formulated by the people's congresses or their standing committees of provinces, autonomous regions and municipalities directly under the Central Government shall be reported to the Standing Committee of the National People's Congress and the State Council for the record; local regulations formulated by the people's congresses or their standing committees of the comparatively larger cities shall be reported by the standing committees of the people's congresses of the relevant provinces and autonomous regions to the Standing Committee of the National People's Congress and the State Council for the record;
- (3) Autonomous regulations and separate regulations formulated by autonomous prefectures and autonomous counties shall be reported by the standing committees of people's congresses of the relevant provinces, autonomous regions or municipalities directly under the Central Government to the Standing Committee of the National People's Congress and the State Council for the record;
- (4) The rules of a department and of a local government shall be reported to the State Council for the record. The rules of a local government shall at the same time be reported to the standing committee of the people's congress at the same level for the record. The rules formulated by the people's government of a comparatively larger city shall simultaneously be reported to the standing committee of the people's congress and to the people's government of the relevant province or autonomous region for the record; and
- (5) Regulations formulated upon authorization shall be reported to the organ specified by the authorization decision for the record.

Article 90 When the State Council, the Central Military Commission, the Supreme People's Court, the Supreme People's Procuratorate and the standing committees of the people's congresses of the provinces, autonomous regions and municipalities directly under the Central Government consider that administrative regulations, local regulations, autonomous regulations or separate

regulations contradict the Constitution or laws, they may submit to the Standing Committee of the National People's Congress written requests for examination, and the working offices of the Standing Committee shall refer the requests to the relevant special committees for examination and suggestions.

When State organs other than the ones mentioned in the preceding paragraph, public organizations, enterprises and institutions or citizens consider that administrative regulations, local regulations, autonomous regulations or separate regulations contradict the Constitution or laws, they may submit to the Standing Committee of the National People's Congress written suggestions for examination, and the working offices of the Standing Committee shall study the suggestions and shall, when necessary, refer them to the relevant special committees for examination and suggestions.

Article 91 When after examination a special committee of the National People's Congress considers that administrative regulations, local regulations, autonomous regulations or separate regulations contradict the Constitution or laws, it may submit written suggestions to the organ that has formulated the regulations for examination; or the Law Committee and other relevant special committees may convene a joint meeting for examination and request the said organ to attend the meeting and give an explanation, and then after examination submit to the organ written comments and suggestions. The organ that has formulated the regulations shall, within two months, study and put forth suggestions as to whether to revise the regulations, and shall give feedback to the Law Committee and other relevant special committees of the National People's Congress.

If, after examination, the Law Committee and other relevant special committees of the National People's Congress consider that administrative regulations, local regulations, autonomous regulations or separate regulations contradict the Constitution or laws and the organ that has formulated such regulations refuses to make revision, they may submit written comments and suggestions on the basis of their examination and propose a motion for annulment of the regulations to the Council of Chairmen, which shall decide whether to submit the motion to a meeting of the Standing Committee for examination and decision.

Article 92 Other authorities which receive local regulations, autonomous regulations, separate regulations or rules submitted to them for the record shall, in accordance with the principle of safeguarding legal uniformity, formulate procedures for the examination of such regulations or rules.

## Chapter VI Supplementary Provisions

Article 93 The Central Military Commission shall, in accordance with the Constitution and laws, formulate military regulations.



The General Departments, the various services and arms and the military commands of the Central Military Commission may, in accordance with laws and the military regulations, decisions and orders of the Commission, formulate military rules within the limits of their power.

Military regulations and military rules shall be implemented within the armed forces.

Measures for formulating, revising and nullifying military regulations and military rules shall be formulated by the Central Military Commission in accordance with the principles laid down in this Law.

Article 94 This Law shall go into effect as of July 1, 2000.

# **General Principles of the Civil Law of the People's Republic of China**

Adopted at the Fourth Session of the Sixth National People's Congress on April 12, 1986 and promulgated by Order No. 37 of the President of the People's Republic of China on April 12, 1986

## Contents

### Chapter I Basic Principles

### Chapter II Citizen (Natural Person)

#### Section 1 Capacity for Civil Rights and Capacity for Civil Conduct

#### Section 2 Guardianship

#### Section 3 Declarations of Missing Persons and Death

#### Section 4 Individual Businesses and Leaseholding Farm Households

#### Section 5 Individual Partnership

### Chapter III Legal Persons

#### Section 1 General Stipulations

#### Section 2 Enterprise as Legal Person

#### Section 3 Official Organ, Institution and Social Organization as Legal Persons

#### Section 4 Economic Association

### Chapter IV Civil Juristic Acts and Agency

#### Section 1 Civil Juristic Acts

#### Section 2 Agency

### Chapter V Civil Rights

#### Section 1 Property Ownership and Related Property Rights

#### Section 2 Creditors' Rights

#### Section 3 Intellectual Property Rights

#### Section 4 Personal Rights

### Chapter VI Civil Liability

#### Section 1 General Stipulations

Section 2 Civil Liability for Breach of Contract

Section 3 Civil Liability for Infringement of Rights

Section 4 Methods of Bearing Civil Liability

Chapter VII Limitation of Action

Chapter VIII Application of Law in Civil Relations with Foreigners

Chapter IX Supplementary Provisions

Chapter I Basic Principles

Article 1 This Law is formulated in accordance with the Constitution and the actual situation in our country, drawing upon our practical experience in civil activities, for the purpose of protecting the lawful civil rights and interests of citizens and legal persons and correctly adjusting civil relations, so as to meet the needs of the developing socialist modernization.

Article 2 The Civil Law of the People's Republic of China shall adjust property relationships and personal relationships between civil subjects with equal status, that is, between citizens, between legal persons and between citizens and legal persons.

Article 3 Parties to a civil activity shall have equal status.

Article 4 In civil activities, the principles of voluntariness, fairness, making compensation for equal value, honesty and credibility shall be observed.

Article 5 The lawful civil rights and interests of citizens and legal persons shall be protected by law; no organization or individual may infringe upon them.

Article 6 Civil activities must be in compliance with the law; where there are no relevant provisions in the law, they shall be in compliance with State policies.

Article 7 Civil activities shall have respect for social ethics and shall not harm the public interest, undermine State economic plans or disrupt social economic order.

Article 8 The law of the People's Republic of China shall apply to civil activities within the People's Republic of China, except as otherwise stipulated by law.

The stipulations of this Law as regards citizens shall apply to foreigners and stateless persons within the People's Republic of China, except as otherwise stipulated by law.

Chapter II Citizen (Natural Person)

## Section 1 Capacity for Civil Rights and Capacity for Civil Conduct

Article 9 A citizen shall have the capacity for civil rights from birth to death and shall enjoy civil rights and assume civil obligations in accordance with the law.

Article 10 All citizens are equal as regards their capacity for civil rights.

Article 11 A citizen aged 18 or over shall be an adult. He shall have full capacity for civil conduct, may independently engage in civil activities and shall be called a person with full capacity for civil conduct.

A citizen who has reached the age of 16 but not the age 18 and whose main source of income is his own labour shall be regarded as a person with full capacity for civil conduct.

Article 12 A minor aged 10 or over shall be a person with limited capacity for civil conduct and may engage in civil activities appropriate to his age and intellect; in other civil activities, he shall be represented by his agent ad litem or participate with the consent of his agent ad litem.

A minor under the age of 10 shall be a person having no capacity for civil conduct and shall be represented in civil activities by his agent ad litem.

Article 13 A mentally ill person who is unable to account for his own conduct shall be a person having no capacity for civil conduct and shall be represented in civil activities by his agent ad litem.

A mentally ill person who is unable to fully account for his own conduct shall be a person with limited capacity for civil conduct and may engage in civil activities appropriate to his mental health; in other civil activities, he shall be represented by his agent ad litem or participate with the consent of his agent ad litem.

Article 14 The guardian of a person without or with limited capacity for civil conduct shall be his agent ad litem.

Article 15 The domicile of a citizen shall be the place where his residence is registered; if his habitual residence is not the same as his domicile, his habitual residence shall be regarded as his domicile.

## Section 2 Guardianship

Article 16 The parents of a minor shall be his guardians.

If the parents of a minor are dead or lack the competence to be his guardian, a person from the following categories who has the competence to be a guardian shall act as his guardian:

- (1) paternal or maternal grandparent;
- (2) elder brother or sister; or

(3) any other closely connected relative or friend willing to bear the responsibility of guardianship and having approval from the units of the minor's parents or from the neighbourhood or village committee in the place of the minor's residence.

In case of a dispute over guardianship, the units of the minor's parents or the neighbourhood or village committee in the place of his residence shall appoint a guardian from among the minor's near relatives. If disagreement over the appointment leads to a lawsuit, the people's court shall make a ruling.

If none of the persons listed in the first two paragraphs of this Article is available to be the guardian, the units of the minor's parents, the neighbourhood or village committee in the place of the minor's residence or the civil affairs department shall act as his guardian.

Article 17 A person from the following categories shall act as guardian for a mentally ill person without or with limited capacity for civil conduct:

- (1) spouse;
- (2) parent;
- (3) adult child;
- (4) any other near relative;
- (5) any other closely connected relative or friend willing to bear the responsibility of guardianship and having approval from the unit to which the mentally ill person belongs or from the neighbourhood or village committee in the place of his residence.

In case of a dispute over guardianship, the unit to which the mentally ill person belongs or the neighbourhood or village committee in the place of his residence shall appoint a guardian from among his near relatives. If disagreement over the appointment leads to a lawsuit, the people's court shall make a ruling.

If none of the persons listed in the first paragraph of this article is available to be the guardian, the unit to which the mentally ill person belongs, the neighbourhood or village committee in the place of his residence or the civil affairs department shall act as his guardian.

Article 18 A guardian shall fulfil his duty of guardianship and protect the person, property and other lawful rights and interests of his wards. A guardian shall not handle the property of his ward unless it is in the ward's interests.

A guardian's rights to fulfil his guardianship in accordance with the law shall be protected by law.

If a guardian does not fulfil his duties as guardian or infringes upon the lawful rights and interests of his ward, he shall be held responsible; if a guardian causes any property loss for his ward, he shall compensate for such loss. The people's court may disqualify a guardian based on the application of a concerned party or unit.

Article 19 A person who shares interests with mental patient may apply to a people's court for a declaration that the mental patient is a person without or with limited capacity for civil conduct.

With the recovery of the health of a person who has been declared by a people's court to be without or with limited capacity for civil conduct, and upon his own application or that of an interested person, the people's court may declare him to be a person with limited or full capacity for civil conduct.

### Section 3 Declarations of Missing Persons and Death

Article 20 If a citizen's whereabouts have been unknown for two years, an interested person may apply to a people's court for a declaration of the citizen as missing.

If a person's whereabouts become unknown during a war, the calculation of the time period in which his whereabouts are unknown shall begin on the final day of the war.

Article 21 A missing person's property shall be placed in the custody of his spouse, parents, adult children or other closely connected relatives or friends. In case of a dispute over custody, if the persons stipulated above are unavailable or are incapable of taking such custody, the property shall be placed in the custody of a person appointed by the people's court.

Any taxes, debts and other unpaid expenses owed by a missing person shall defrayed by the custodian out of the missing person's property.

Article 22 In the event that a person who has been declared missing reappears or his whereabouts is ascertained, the people's court shall, upon his own application or that of an interested person, revoke the declaration of his missing-person status.

Article 23 Under either of the following circumstances, an interested person may apply to the people's court for a declaration of a citizen's death:

- (1) if the citizen's whereabouts have been unknown for four years; or
- (2) if the citizen's whereabouts have been unknown for two years after the date of an accident in which he was involved.

If a person's whereabouts become unknown during a war, the calculation of the time period in which his whereabouts are unknown shall begin on the final day of the war.

Article 24 In the event that a person who has been declared dead reappears or it is ascertained that he is alive, the people's court shall, upon his own application or that of an interested person, revoke the declaration of his death.

Any civil juristic acts performed by a person with capacity for civil conduct during the period in which he has been declared dead shall be valid.

Article 25 A person shall have the right to request the return of his property, if the declaration of his death has been revoked. Any citizen or organization that has obtained such property in

accordance with the Inheritance Law shall return the original items or make appropriate compensation if the original items are no longer existent.

#### Section 4 Individual Businesses and Leaseholding Farm Households

Article 26 "Individual businesses" refers to businesses run by individual citizens who have been lawfully registered and approved to engage in industrial or commercial operation within the sphere permitted by law. An individual business may adopt a shop name.

Article 27 "Leaseholding farm households" refers to members of a rural collective economic organization who engage in commodity production under a contract and within the spheres permitted by law.

Article 28 The legitimate rights and interests of individual businesses and leaseholding farm households shall be protected by law.

Article 29 The debts of an individual business or a leaseholding farm household shall be secured with the individual's property if the business is operated by an individual and with the family's property if the business is operated by a family.

#### Section 5 Individual Partnership

Article 30 "Individual partnership" refers to two or more citizens associated in a business and working together, with each providing funds, material objects, techniques and so on according to an agreement.

Article 31 Partners shall make a written agreement covering the funds each is to provide, the distribution of profits, the responsibility for debts, the entering into and withdrawal from partnership, the ending of partnership and other such matters.

Article 32 The property provided by the partners shall be under their unified management and use.

The property accumulated in a partnership operation shall belong to all the partners.

Article 33 An individual partnership may adopt a shop name; it shall be approved and registered in accordance with law and conduct business operations within the range as approved and registered.

Article 34 The operational activities of an individual partnership shall be decided jointly by the partners, who each shall have the right to carry out and supervise those activities.

The partners may elect a responsible person. All partners shall bear civil liability for the operational activities of the responsible person and other personnel.

Article 35 A partnership's debts shall be secured with the partners' property in proportion to their respective contributions to the investment or according to the agreement made.

Partners shall undertake joint liability for their partnership's debts, except as otherwise stipulated by law. Any partner who overpays his share of the partnership's debts shall have the right to claim compensation from the other partners.

## Chapter III Legal Persons

### Section 1 General Stipulations

Article 36 A legal person shall be an organization that has capacity for civil rights and capacity for civil conduct and independently enjoys civil rights and assumes civil obligations in accordance with the law.

A legal person's capacity for civil rights and capacity for civil conduct shall begin when the legal person is established and shall end when the legal person terminates.

Article 37 A legal person shall have the following qualifications:

- (1) establishment in accordance with the law;
- (2) possession of the necessary property or funds;
- (3) possession of its own name, organization and premises; and
- (4) ability to independently bear civil liability.

Article 38 In accordance with the law or the articles of association of the legal person, the responsible person who acts on behalf of the legal person in exercising its functions and powers shall be its legal representative.

Article 39 A legal person's domicile shall be the place where its main administrative office is located.

Article 40 When a legal person terminates, it shall go into liquidation in accordance with the law and discontinue all other activities.

### Section 2 Enterprise as Legal Person

Article 41 An enterprise owned by the whole people or under collective ownership shall be qualified as a legal person when it has sufficient funds as stipulated by the State; has articles of association, an organization and premises; has the ability to independently bear civil liability; and has been approved and registered by the competent authority.

A Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture or foreign-capital enterprise established within the People's Republic of China shall be qualified as a legal person in China, if it has the qualifications of a legal person and has been approved and registered by the administrative agency for industry and commerce in accordance with the law.

Article 42 An enterprise as legal person shall conduct operations within the range approved and registered.



Article 43 An enterprise as legal person shall bear civil liability for the operational activities of its legal representatives and other personnel.

Article 44 If an enterprise as legal person is divided or merged or undergoes any other important change, it shall register the change with the registration authority and publicly announce it.

When an enterprise as legal person is divided or merged, its rights and obligations shall be enjoyed and assumed by the new legal person that results from the change.

Article 45 An enterprise as legal person shall terminate for any of the following reasons:

- (1) if it is dissolved by law;
- (2) if it is disbanded;
- (3) if it is declared bankrupt in accordance with the law; or
- (4) for other reasons.

Article 46 When an enterprise as legal person terminates, it shall cancel its registration with the registration authority and publicly announce the termination.

Article 47 When an enterprise as legal person is disbanded, it shall establish a liquidation organization and go into liquidation. When an enterprise as legal person is dissolved or is declared bankrupt, the competent authority or a people's court shall organize the organs and personnel concerned to establish a liquidation organization to liquidate the enterprise.

Article 48 An enterprise owned by the whole people, as legal person, shall bear civil liability with the property that the State authorizes it to manage. An enterprise under collective ownership, as legal person, shall bear civil liability with the property it owns. A Chinese-foreign equity joint venture, Chinese-foreign contractual joint venture or foreign-capital enterprise as legal person shall bear civil liability with the property it owns, except as stipulated otherwise by law.

Article 49 Under any of the following circumstances, an enterprise as legal person shall bear liability, its legal representative may additionally be given administrative sanctions and fined and, if the offence constitutes a crime, criminal responsibility shall be investigated in accordance with the law:

- (1) conducting illegal operations beyond the range approved and registered by the registration authority;
- (2) concealing facts from the registration and tax authorities and practising fraud;
- (3) secretly withdrawing funds or hiding property to evade repayment of debts;
- (4) disposing of property without authorization after the enterprise is dissolved, disbanded or declared bankrupt;
- (5) failing to apply for registration and make a public announcement promptly when the enterprise undergoes a change or terminates, thus causing interested persons to suffer heavy losses;

(6) engaging in other activities prohibited by law, damaging the interests of the State or the public interest.

### Section 3 Official Organ, Institution and Social Organization as Legal Person

Article 50 An independently funded official organ shall be qualified as a legal person on the day it is established.

If according to law an institution or social organization having the qualifications of a legal person needs not go through the procedures for registering as a legal person, it shall be qualified as a legal person on the day it is established; if according to law it does need to go through the registration procedures, it shall be qualified as a legal person after being approved and registered.

### Section 4 Economic Association

Article 51 If a new economic entity is formed by the enterprises or an enterprise and an institution that engage in economic association and it independently bears civil liability and has the qualifications of a legal person, the new entity shall be qualified as a legal person after being approved and registered by the competent authority.

Article 52 If the enterprises or an enterprise and an institution that engage in economic association conduct joint operation but do not have the qualifications of a legal person, each party to the association shall, in proportion to its respective contribution to the investment or according to the agreement made, bear civil liability with the property each party owns or manages. If joint liability is specified by law or by agreement, the parties shall assume joint liability.

Article 53 If the contract for economic association of enterprises or of an enterprise and an institution specifies that each party shall conduct operations independently, it shall stipulate the rights and obligations of each party, and each party shall bear civil liability separately.

## Chapter IV Civil Juristic Acts and Agency

### Section 1 Civil Juristic Acts

Article 54 A civil juristic act shall be the lawful act of a citizen or legal person to establish, change or terminate civil rights and obligations.

Article 55 A civil juristic act shall meet the following requirements:

- (1) the actor has relevant capacity for civil conduct;
- (2) the intention expressed is genuine; and
- (3) the act does not violate the law or the public interest.

Article 56 A civil juristic act may be in written, oral or other form. If the law stipulates that a particular form be adopted, such stipulation shall be observed.

Article 57 A civil juristic act shall be legally binding once it is instituted. The actor shall not alter or rescind his act except in accordance with the law or with the other party's consent.

Article 58 Civil acts in the following categories shall be null and void:

- (1) those performed by a person without capacity for civil conduct;
- (2) those that according to law may not be independently performed by a person with limited capacity for civil conduct;
- (3) those performed by a person against his true intentions as a result of cheating, coercion or exploitation of his unfavourable position by the other party;
- (4) those that performed through malicious collusion are detrimental to the interest of the State, a collective or a third party;
- (5) those that violate the law or the public interest;
- (6) economic contracts that violate the State's mandatory plans; and
- (7) those that performed under the guise of legitimate acts conceal illegitimate purposes.

Civil acts that are null and void shall not be legally binding from the very beginning.

Article 59 A party shall have the right to request a people's court or an arbitration agency to alter or rescind the following civil acts:

- (1) those performed by an actor who seriously misunderstood the contents of the acts; and
- (2) those that are obviously unfair.

Rescinded civil acts shall be null and void from the very beginning.

Article 60 If a part of a civil act is null and void, it shall not affect the validity of other part.

Article 61 After a civil act has been determined to be null and void or has been rescinded, the party who acquired property as a result of the act shall return it to the party who suffered a loss. The erring party shall compensate the other party for the losses it suffered as a result of the act; if both sides are in error, they shall each bear their proper share of the responsibility.

If the two sides have conspired maliciously and performed a civil act that is detrimental to the interests of the State, a collective or a third party, the property that they thus obtained shall be recovered and turned over to the State or the collective, or returned to the third party.

Article 62 A civil juristic act may have conditions attached to it. Conditional civil juristic acts shall take effect when the relevant conditions are met.

Section 2 Agency

Article 63 Citizens and legal persons may perform civil juristic acts through agents

An agent shall perform civil juristic acts in the principal's name within the scope of the power of agency. The principal shall bear civil liability for the agent's acts of agency.

Civil juristic acts that should be performed by the principal himself, pursuant to legal provisions or the agreement between the two parties, shall not be entrusted to an agent.

Article 64 Agency shall include entrusted agency, statutory agency and appointed agency.

An entrusted agent shall exercise the power of agency as entrusted by the principal; a statutory agent shall exercise the power of agency as prescribed by law; and an appointed agent shall exercise the power of agency as designated by a people's court or the appointing unit.

Article 65 A civil juristic act may be entrusted to an agent in writing or orally. If legal provisions require the entrustment to be written, it shall be effected in writing.

Where the entrustment of agency is in writing, the power of attorney shall clearly state the agent's name, the entrusted tasks and the scope and duration of the power of agency, and it shall be signed or sealed by the principal.

If the power of attorney is not clear as to the authority conferred, the principal shall bear civil liability towards the third party, and the agent shall be held jointly liable.

Article 66 The principal shall bear civil liability for an act performed by an actor with no power of agency, beyond the scope of his power of agency or after his power of agency has expired, only if he recognizes the act retroactively. If the act is not so recognized, the performer shall bear civil liability for it. If a principal is aware that a civil act is being executed in his name but fails to repudiate it, his consent shall be deemed to have been given.

An agent shall bear civil liability if he fails to perform his duties and thus causes damage to the principal.

If an agent and a third party in collusion harm the principal's interests, the agent and the third party shall be held jointly liable.

If a third party is aware that an actor has no power of agency, is overstepping his power of agency, or his power of agency has expired and yet joins him in a civil act and thus brings damage to other people, the third party and the actor shall be held jointly liable.

Article 67 If an agent is aware that the matters entrusted are illegal but still carries them out, or if a principal is aware that his agent's acts are illegal but fails to object to them, the principal and the agent shall be held jointly liable.

Article 68 If in the principal's interests an entrusted agent needs to transfer the agency to another person, he shall first obtain the principal's consent. If the principal's consent is not obtained in advance, the matter shall be reported to him promptly after the transfer, and if the principal objects, the agent shall bear civil liability for the acts of the transferee; however, an entrusted

agency transferred in emergency circumstances in order to safeguard the principal's interests shall be excepted.

Article 69 An entrusted agency shall end under any of the following circumstances:

- (1) when the period of agency expires or when the tasks entrusted are completed;
- (2) when the principal rescinds the entrustment or the agent declines the entrustment;
- (3) when the agent dies;
- (4) when the principal loses his capacity for civil conduct; or
- (5) when the principal or the agent ceases to be a legal person.

Article 70 A statutory or appointed agency shall end under any of the following circumstances:

- (1) when the principal gains or recovers capacity for civil conduct;
- (2) when the principal or the agent dies;
- (3) when the agent loses capacity for civil conduct;
- (4) when the people's court or the unit that appointed the agent rescinds the appointment; or
- (5) when the guardian relationship between the principal and the agent ends for other reasons.

## Chapter V Civil Rights

### Section 1 Property Ownership and Related Property Rights

Article 71 "Property ownership" means the owner's rights to lawfully possess, utilize, profit from and dispose of his property.

Article 72 Property ownership shall not be obtained in violation of the law.

Unless the law stipulates otherwise or the parties concerned have agreed on other arrangements, the ownership of property obtained by contract or by other lawful means shall be transferred simultaneously with the property itself.

Article 73 State property shall be owned by the whole people.

State property is sacred and inviolable, and no organization or individual shall be allowed to seize, encroach upon, privately divide, retain or destroy it.

Article 74 Property of collective organizations of the working masses shall be owned collectively by the working masses. This shall include:

- (1) land, forests, mountains, grasslands, unreclaimed land, beaches and other areas that are stipulated by law to be under collective ownership;
- (2) property of collective economic organizations;
- (3) collectively owned buildings, reservoirs, farm irrigation facilities and educational, scientific, cultural, health, sports and other facilities; and
- (4) other property that is collectively owned.

Collectively owned land shall be owned collectively by the village peasants in accordance with the law and shall be worked and managed by village agricultural production cooperatives, other collective agricultural economic organizations or villagers' committees. Land already under the ownership of the township (town) peasants' collective economic organizations may be collectively owned by the peasants' of the township (town).

Collectively owned property shall be protected by law, and no organization or individual may seize, encroach upon, privately divide, destroy or illegally seal up, distrain, freeze or confiscate it.

Article 75 A citizen's personal property shall include his lawfully earned income, housing, savings, articles for daily use, objects of cultural relics, books, reference materials, trees, livestock, as well as means of production the law permits a citizen to possess and other lawful property.

A citizen's lawful property shall be protected by law, and no organization or individual may appropriate, encroach upon, destroy or illegally seal up, distrain, freeze or confiscate it.

Article 76 Citizens shall have the right of inheritance under the law.

Article 77 The lawful property of social organizations, including religious organizations, shall be protected by law.

Article 78 Property may be owned jointly by two or more citizens or legal persons.

There shall be two kinds of joint ownership, namely co-ownership by shares and common ownership. Each of the co-owners by shares shall enjoy the rights and assume the obligations respecting the joint property in proportion to his share. Each of the common owners shall enjoy the rights and assume the obligations respecting the joint property.

Each co-owner by shares shall have the right to withdraw his own share of the joint property or transfer its ownership. However, when he offers to sell his share, the other co-owners shall have a right of pre-option if all other conditions are equal.

Article 79 If the owner of a buried or concealed object is unknown, the object shall belong to the State. The unit that receives the object shall commend or give a material reward to the unit or individual that turns in the object.

Lost-and-found objects, flotsam and stray animals shall be returned to their rightful owners, and any costs thus incurred shall be reimbursed by the owners.

Article 80 State-owned land may be used according to law by units under ownership by the whole people; it may also be lawfully assigned for use by units under collective ownership. The State shall protect the usufruct of the land, and the usufructuary shall be obligated to manage, protect and properly use the land.

The right of citizens and collectives to contract for management of land under collective ownership or of State-owned land under collective use shall be protected by law. The rights and obligations of the two contracting parties shall be stipulated in the contract signed in accordance with the law.

Land may not be sold, leased, mortgaged or illegally transferred by any other means.

Article 81 State-owned forests, mountains, grasslands, unreclaimed land, beaches, water surfaces and other natural resources may be used according to law by units under ownership by the whole people; or they may also be lawfully assigned for use by units under collective ownership. The State shall protect the usufruct of those resources, and the usufructuary shall be obliged to manage, protect and properly use them.

State-owned mineral resources may be mined according to law by units under ownership by the whole people and units under collective ownership; citizens may also lawfully mine such resources. The State shall protect lawful mining rights.

The right of citizens and collectives to lawfully contract for the management of forests, mountains, grasslands, unreclaimed land, beaches and water surfaces that are owned by the collectives or owned by the State but used by collectives shall be protected by law. The rights and obligations of the two contracting parties shall be stipulated in the contract in accordance with the law.

State-owned mineral resources and waters as well as forest land, mountains, grasslands, unreclaimed land and beaches owned by the State and those that are lawfully owned by collectives may not be sold, leased, mortgaged or illegally transferred by any other means.

Article 82 Enterprises under ownership by the whole people shall lawfully enjoy the rights of management over property that the State has authorized them to manage and operate, and the rights shall be protected by law.

Article 83 In the spirit of helping production, making things convenient for people's life, enhancing unity and mutual assistance, and being fair and reasonable, neighbouring users of real estate shall maintain proper neighbourly relations over such matters as water supply, drainage, passageway, ventilation and lighting. Anyone who causes obstruction or damages to his neighbour, shall stop the infringement, eliminate the obstruction and compensate for the damages.

## Section 2 Creditors' Rights

Article 84 A debt represents a special relationship of rights and obligations established between the parties concerned, either according to the agreed terms of a contract or legal provisions. The party entitled to the rights shall be the creditor, and the party assuming the obligations shall be the debtor.

The creditor shall have the right to demand that the debtor fulfil his obligations as specified by the contract or according to legal provisions.

Article 85 A contract shall be an agreement whereby the parties establish, change or terminate their civil relationship. Lawfully established contracts shall be protected by law.

Article 86 When there are two or more creditors to a deal, each creditor shall be entitled to rights in proportion to his proper share of the credit. When there are two or more debtors to a deal, each debtor shall assume obligations in proportion to his proper share of the debt.

Article 87 When there are two or more creditors or debtors to a deal, each of the joint creditors shall be entitled to demand that the debtor fulfil his obligations, in accordance with legal provisions or the agreement between the parties; each of the joint debtors shall be obliged to perform the entire debt, and the debtor who performs the entire debt shall be entitled to ask the other joint debtors to reimburse him for their shares of the debt.

Article 88 The parties to a contract shall fully fulfil their obligations pursuant to the terms of the contract.

If a contract contains ambiguous terms regarding quality, time limit for performance, place of performance, or price, and the intended meaning cannot be determined from the context of relevant terms in the contract, and if the parties cannot reach an agreement through consultation, the provisions below shall apply:

- (1) If quality requirements are unclear, State quality standards shall apply; if there are no State quality standards, generally held standards shall apply.
- (2) If the time limit for performance is unclear, the debtor may at his convenience fulfil his obligations towards the creditor; the creditor may also demand at any time that the debtor perform his obligations, but sufficient notice shall be given to the debtor.
- (3) If the place of performance is unclear, and the payment is money, the performance shall be effected at the seat or place of residence of the party receiving the payment; if the payment is other than money, the performance shall be effected at the seat or place of residence of the party fulfilling the obligations.
- (4) If the price agreed by the parties is unclear, the State-fixed price shall apply. If there is no State-fixed price, the price shall be based on market price or the price of a similar article or remuneration for a similar service.

If the contract does not contain an agreed term regarding rights to patent application, any party who has completed an invention-creation shall have the right to apply for a patent.

If the contract does not contain an agreed term regarding rights to the use of scientific and technological research achievements, the parties shall all have the right to use such achievements.

Article 89 In accordance with legal provisions the agreement between the parties on the performance of a debt may be guaranteed using the methods below:



(1) A guarantor may guarantee to the creditor that the debtor shall perform his debt. If the debtor defaults, the guarantor shall perform the debt or bear joint liability according to agreement. After performing the debt, the guarantor shall have the right to claim repayment from the debtor.

(2) The debtor or a third party may offer a specific property as a pledge. If the debtor defaults, the creditor shall be entitled to keep the pledge to offset against the debt or have priority in satisfying his claim out of the proceeds from the sale of the pledge pursuant to relevant legal provisions.

(3) Within the limits of relevant legal provisions, a party may leave a deposit with the other party. After the debtor has discharged his debt, the deposit shall either be retained as partial payment of the debt or returned. If the party who leaves the deposit defaults, he shall not be entitled to demand the return of the deposit; if the party who accepts the deposit defaults, he shall repay the deposit in double.

(4) If a party has possession of the other party's property according to contract, and the other party violates the contract by failing to pay a required sum of money within the specified time limit, the possessor shall have a lien on the property and may keep the retained property to offset the debt or have priority in satisfying his claim out of the proceeds from the sale of the property pursuant to relevant legal provisions.

Article 90 Legitimate loan relationships shall be protected by law.

Article 91 If a party to a contract transfers all or part of his contractual rights or obligations to a third party, he shall obtain the other party's consent and may not seek profits therefrom. Contracts which according to legal provisions are subject to State approval, such as transfers, must be approved by the authority that originally approved the contract, unless the law or the original contract stipulates otherwise.

Article 92 If profits are acquired improperly and without a lawful basis, resulting in another person's loss, the illegal profits shall be returned to the person who suffered the loss.

Article 93 If a person acts as manager or provides services in order to protect another person's interests when he is not legally or contractually obligated to do so, he shall be entitled to claim from the beneficiary the expenses necessary for such assistance.

### Section 3 Intellectual Property Rights

Article 94 Citizens and legal persons shall enjoy rights of authorship (copyrights) and shall be entitled to sign their names as authors, issue and publish their works and obtain remuneration in accordance with the law.

Article 95 The patent rights lawfully obtained by citizens and legal persons shall be protected by law.

Article 96 The rights to exclusive use of trademarks obtained by legal persons, individual businesses and individual partnerships shall be protected by law.

Article 97 Citizens who make discoveries shall be entitled to the rights of discovery. A discoverer shall have the right to apply for and receive certificates of discovery, bonuses or other awards.

Citizens who make inventions or other achievements in scientific and technological researches shall have the right to apply for and receive certificates of honour, bonuses or other awards.

#### Section 4 Personal Rights

Article 98 Citizens shall enjoy the rights of life and health.

Article 99 Citizens shall enjoy the right of personal name and shall be entitled to determine, use or change their personal names in accordance with relevant provisions. Interference with, usurpation of and false representation of personal names shall be prohibited.

Legal persons, individual businesses and individual partnerships shall enjoy the right of name. Enterprises as legal persons, individual businesses and individual partnerships shall have the right to use and lawfully assign their own names.

Article 100 Citizens shall enjoy the right of portrait.

The use of a citizen's portrait for profits without his consent shall be prohibited.

Article 101 Citizens and legal persons shall enjoy the right of reputation. The personality of citizens shall be protected by law, and the use of insults, libel or other means to damage the reputation of citizens or legal persons shall be prohibited.

Article 102 Citizens and legal persons shall enjoy the right of honour. It shall be prohibited to unlawfully divest citizens and legal persons of their honorary titles.

Article 103 Citizens shall enjoy the right of marriage by choice. Mercenary marriages, marriages upon arbitrary decision by any third party and any other acts of interference in the freedom of marriage shall be prohibited.

Article 104 Marriage, the family, old people, mothers and children shall be protected by law.

The lawful rights and interests of the handicapped shall be protected by law.

Article 105 Women shall enjoy equal civil rights with men.

#### Chapter VI Civil Liability

##### Section 1 General Stipulations

Article 106 Citizens and legal persons who breach a contract or fail to fulfil other obligations shall bear civil liability.

Citizens and legal persons who through their fault encroach upon State or collective property or the property or person of other people shall bear civil liability.

Civil liability shall still be borne even in the absence of fault, if the law so stipulates.

Article 107 Civil liability shall not be borne for failure to perform a contract or damage to a third party if it is caused by force majeure, except as otherwise provided by law.

Article 108 Debts shall be cleared. If a debtor is unable to repay his debt immediately, he may repay by installments with the consent of the creditor or a ruling by a people's court. If a debtor is capable of repaying his debt but refuses to do so, repayment shall be compelled by the decision of a people's court.

Article 109 If a person suffers damages from preventing or stopping encroachment on State or collective property, or the property or person of a third party, the infringer shall bear responsibility for compensation, and the beneficiary may also give appropriate compensation.

Article 110 Citizens or legal persons who bear civil liability shall also be held for administrative responsibility if necessary. If the acts committed by citizens and legal persons constitute crimes, criminal responsibility of their legal representatives shall be investigated in accordance with the law.

## Section 2 Civil Liability for Breach of Contract

Article 111 If a party fails to fulfil its contractual obligations or violates the terms of a contract while fulfilling the obligations, the other party shall have the right to demand fulfilment or the taking of remedial measures and claim compensation for its losses.

Article 112 The party that breaches a contract shall be liable for compensation equal to the losses consequently suffered by the other party.

The parties may specify in a contract that if one party breaches the contract it shall pay the other party a certain amount of breach of contract damages; they may also specify in the contract the method of assessing the compensation for any losses resulting from a breach of contract.

Article 113 If both parties breach the contract, each party shall bear its respective civil liability.

Article 114 If one party is suffering losses owing to the other party's breach of contract, it shall take prompt measures to prevent the losses from increasing; if it does not promptly do so, it shall not have the right to claim compensation for the additional losses.

Article 115 A party's right to claim compensation for losses shall not be affected by the alteration or termination of a contract.

Article 116 If a party fails to fulfil its contractual obligations on account of a higher authority, it shall first compensate for the losses of the other party or take other remedial measures as contractually agreed and then the higher authority shall be responsible for settling the losses it sustained.

## Section 3 Civil Liability for Infringement of Rights

Article 117 Anyone who encroaches on the property of the State, a collective or another person shall return the property; failing that, he shall reimburse its estimated price.

Anyone who damages the property of the State, a collective or another person shall restore the property to its original condition or reimburse its estimated price. If the victim suffers other great losses therefrom, the infringer shall compensate for those losses as well

Article 118 If the rights of authorship (copyrights), patent rights, rights to exclusive use of trademarks, rights of discovery, rights of invention or rights for scientific and technological research achievements of citizens or legal persons are infringed upon by such means as plagiarism, alteration or imitation, they shall have the right to demand that the infringement be stopped, its ill effects be eliminated and the damages be compensated for.

Article 119 Anyone who infringes upon a citizen's person and causes him physical injury shall pay his medical expenses and his loss in income due to missed working time and shall pay him living subsidies if he is disabled; if the victim dies, the infringer shall also pay the funeral expenses, the necessary living expenses of the deceased's dependents and other such expenses.

Article 120 If a citizen's right of personal name, portrait, reputation or honour is infringed upon, he shall have the right to demand that the infringement be stopped, his reputation be rehabilitated, the ill effects be eliminated and an apology be made; he may also demand compensation for losses.

The above paragraph shall also apply to infringements upon a legal person's right of name, reputation or honour.

Article 121 If a State organ or its personnel, while executing its duties, encroaches upon the lawful rights and interests of a citizen or legal person and causes damages, it shall bear civil liability.

Article 122 If a substandard product causes property damage or physical injury to others, the manufacturer or seller shall bear civil liability according to law. If the transporter or storekeeper is responsible for the matter, the manufacturer or seller shall have the right to demand compensation for its losses.

Article 123 If any person causes damage to other people by engaging in operations that are greatly hazardous to the surroundings, such as operations conducted high aboveground, or those involving high pressure, high voltage, combustibles, explosives, highly toxic or radioactive substances or high-speed means of transport, he shall bear civil liability; however, if it can be proven that the damage was deliberately caused by the victim, he shall not bear civil liability.

Article 124 Any person who pollutes the environment and causes damages to others in violation of State provisions for environmental protection and the prevention of pollution shall bear civil liability in accordance with the law.

Article 125 Any constructor who engages in excavation, repairs or installation of underground facilities in a public place, on a roadside or in a passageway without setting up clear signs and adopting safety measures and thereby causes damages to others shall bear civil liability.

Article 126 If a building or any other installation or an object placed or hung on a structure collapses, detaches or drops down and causes damages to others, its owner or manager shall bear civil liability, unless he can prove himself not a fault.

Article 127 If a domesticated animal causes harm to any person, its keeper or manager shall bear civil liability. If the harm occurs through the fault of the victim, the keeper or manager shall not bear civil liability; if the harm occurs through the fault of a third party, the third party shall bear civil liability.

Article 128 A person who causes harm in exercising justifiable defence shall not bear civil liability. If justifiable defence exceeds the limits of necessity and undue harm is caused, an appropriate amount of civil liability shall be borne.

Article 129 If harm occurs through emergency actions taken to avoid danger, the person who gave rise to the danger shall bear civil liability. If the danger arose from natural causes, the person who took the emergency actions may either be exempt from civil liability or bear civil liability to an appropriate extent. If the emergency measures taken are improper or exceed the limits of necessity and undue harm is caused, the person who took the emergency action shall bear civil liability to an appropriate extent.

Article 130 If two or more persons jointly infringe upon another person's rights and cause him damages, they shall bear joint liability.

Article 131 If a victim is also at fault for causing the damage, the civil liability of the infringer may be reduced.

Article 132 If none of the parties are at fault in causing damage, they may share civil liability according to the actual circumstances.

Article 133 If a person without or with limited capacity for civil conduct causes damages to others, his guardian shall bear civil liability. If the guardian has done his duty of guardianship, his civil liability may be appropriately reduced.

If a person who has property but is without or with limited capacity for civil conduct causes damages to others, the expenses of compensation shall be paid from his property. Shortfalls in such expenses shall be appropriately compensated for by the guardian unless the guardian is a unit.

#### Section 4 Methods of Bearing Civil Liability

Article 134 The main methods of bearing civil liability shall be:

- (1) cessation of infringements;
- (2) removal of obstacles;
- (3) elimination of dangers;
- (4) return of property;
- (5) restoration of original condition;
- (6) repair, reworking or replacement;

- (7) compensation for losses;
- (8) payment of breach of contract damages;
- (9) elimination of ill effects and rehabilitation of reputation; and
- (10) extension of apology.

The above methods of bearing civil liability may be applied exclusively or concurrently.

When hearing civil cases, a people's court, in addition to applying the above stipulations, may serve admonitions, order the offender to sign a pledge of repentance, and confiscate the property used in carrying out illegal activities and the illegal income obtained therefrom. It may also impose fines or detentions as stipulated by law.

## Chapter VII Limitation of Action

Article 135 Except as otherwise stipulated by law, the limitation of action regarding applications to a people's court for protection of civil rights shall be two years.

Article 136 The limitation of action shall be one year on cases concerning the following:

- (1) claims for compensation for bodily injuries;
- (2) sales of substandard goods without proper notice to that effect;
- (3) delays in paying rent or refusal to pay rent; or
- (4) loss of or damage to property left in the care of another person.

Article 137 A limitation of action shall begin when the entitled person knows or should know that his rights have been infringed upon. However, the people's court shall not protect his rights if 20 years have passed since the infringement. Under special circumstances, the people's court may extend the limitation of action.

Article 138 If a party chooses to fulfil obligations voluntarily after the limitation of action has expired, he shall not be subject to the limitation.

Article 139 A limitation of action shall be suspended during the last six months of the limitation if the plaintiff cannot exercise his right of claim because of force majeure or other obstacles. The limitation shall resume on the day when the grounds for the suspension are eliminated.

Article 140 A limitation of action shall be discontinued if suit is brought or if one party makes a claim for or agrees to fulfilment of obligations. A new limitation shall be counted from the time of the discontinuance.

Article 141 If the law has other stipulations concerning limitation of action, those stipulations shall apply.

## Chapter VIII Application of Law in Civil Relations with Foreigners

Article 142 The application of law in civil relations with foreigners shall be determined by the provisions in this chapter.

If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations.

International practice may be applied on matters for which neither the law of the People's Republic of China nor any international treaty concluded or acceded to by the People's Republic of China has any provisions.

Article 143 If a citizen of the People's Republic of China settles in a foreign country, the law of that country may be applicable as regards his capacity for civil conduct.

Article 144 The ownership of immovable property shall be bound by the law of the place where it is situated.

Article 145 The parties to a contract involving foreign interests may choose the law applicable to settlement of their contractual disputes, except as otherwise stipulated by law.

If the parties to a contract involving foreign interests have not made a choice, the law of the country to which the contract is most closely connected shall be applied.

Article 146 The law of the place where an infringing act is committed shall apply in handling compensation claims for any damage caused by the act. If both parties are citizens of the same country or have established domicile in another country, the law of their own country or the country of domicile may be applied.

An act committed outside the People's Republic of China shall not be treated as an infringing act if under the law of the People's Republic of China it is not considered an infringing act.

Article 147 The marriage of a citizen of the People's Republic of China to a foreigner shall be bound by the law of the place where they get married, while a divorce shall be bound by the law of the place where a court accepts the case.

Article 148 Maintenance of a spouse after divorce shall be bound by the law of the country to which the spouse is most closely connected.

Article 149 In the statutory succession of an estate, movable property shall be bound by the law of the decedent's last place of residence, and immovable property shall be bound by the law of the place where the property is situated.

Article 150 The application of foreign laws or international practice in accordance with the provisions of this chapter shall not violate the public interest of the People's Republic of China.

## Chapter IX Supplementary Provisions

Article 151 The people's congresses of the national autonomous areas may formulate separate adaptive or supplementary regulations or provisions in accordance with the principles of this Law and in the light of the characteristics of the local nationalities. Those formulated by the people's congresses of autonomous regions shall be submitted in accordance with the law to the Standing Committee of the National People's Congress for approval or for the record. Those formulated by the people's congresses of autonomous prefectures or autonomous counties shall be submitted to the standing committee of the people's congress in the relevant province or autonomous region for approval.

Article 152 If an enterprise owned by the whole people has been established with the approval of the competent authority of a province, autonomous region or centrally administered municipality or at a higher level and it has already been registered with the administrative agency for industry and commerce, before this Law comes into force, it shall automatically qualify as a legal person without having to re-register as such.

Article 153 For the purpose of this Law, "force majeure" means unforeseeable, unavoidable and insurmountable objective conditions.

Article 154 Time periods referred to in the Civil Law shall be calculated by the Gregorian calendar in years, months, days and hours.

When a time period is prescribed in hours, calculation of the period shall begin on the prescribed hour. When a time period is prescribed in days, months and years, the day on which the period begins shall not be counted as within the period; calculation shall begin on the next day.

If the last day of a time period falls on a Sunday or an official holiday, the day after the holiday shall be taken as the last day.

The last day shall end at 24:00 hours. If business hours are applicable, the last day shall end at closing time.

Article 155 In this Law, the terms "not less than," "not more than" "within" and "expires" shall include the given figure; the terms "under" and "beyond" shall not include the given figure.

Article 156 This Law shall come into force on January 1, 1987.





# **Property Law of the People's Republic of China**

Adopted at the Fifth Session of the Tenth National People's Congress on March 16, 2007

## Contents

### Part One General Provisions

#### Chapter I Basic Principles

#### Chapter II Creation, Alteration, Transfer and Extinction of the Property Right

##### Section 1 Registration of the Immovables

##### Section 2 Delivery of the Movables

##### Section 3 Other Provisions

#### Chapter III Protection of the Property Right

### Part Two Ownership

#### Chapter IV General Stipulations

#### Chapter V Ownership of the State, the Collective and the Individual Person

#### Chapter VI Condominium Right of Property Owners

#### Chapter VII Neighboring Relations

#### Chapter VIII Co-ownership

#### Chapter IX Special Provisions on Acquisition of Ownership

### Part Three Usufructs

#### Chapter X General Stipulations

#### Chapter XI The Right to Land Contractual Management

#### Chapter XII The Right to the Use of Land for Construction

#### Chapter XIII The Right to the Use of House Sites

#### Chapter XIV Easements

### Part Four Security Interest in Property

#### Chapter XV General Stipulations

## Chapter XVI Interests Obtained from Mortgage

### Section 1 General Interest Obtained from Mortgage

### Section 2 Maximum Mortgage Interest

## Chapter XVII Interest Acquired Through Pledge

### Section 1 Interest Acquired Through Pledge of Movables

### Section 2 Interests Acquired Through Pledge of Rights Chapter XVIII Lien

## Part Five Possession

## Chapter XIX Possession

## Supplementary Provisions

## Part One General Provisions

## Chapter I Basic Principles

Article 1 This Law is enacted in accordance with the Constitution for the purpose of upholding the basic economic system of the State, maintaining the order of the socialist market economy, defining the attribution of things, giving play to the usefulness of things and protecting the property right of obligees.

Article 2 This Law shall be applicable to civil relationships stemming from attribution and use of things.

For the purposes of this Law, things include the immovables and the movables. Where laws stipulate that rights are taken as objects of the property right, the provisions of such laws shall prevail.

The property right mentioned in this Law means the exclusive right enjoyed by the obligee to directly dominate a given thing according to law, which consists of the right of ownership, the usufruct and the security interest on property.

Article 3 In the primary stage of socialism, the State upholds the basic economic system under which public ownership is dominant and the economic sectors of diverse forms of ownership develop side by side.

The State consolidates and develops the public sectors of the economy, and encourages, supports and guides to the development of the non-public sectors of the economy.

The State maintains a socialist market economy and guarantees the equal legal status and the right to development of all the mainstays of the market.

Article 4 The property right of the State, the collectives, the individual persons and other obligees are protected by law, and no units or individuals shall encroach on it.

Article 5 The categories and contents of the property right shall be stipulated by law.

Article 6 The creation, alteration, transfer or extinction of the property right of the immovables shall be registered in accordance with the provisions of law. The property right of the movables shall be created or transferred upon delivery in accordance with the provisions of law.

Article 7 The law shall be observed and social ethics shall be respected in acquiring or exercising the property right and public interests and the lawful rights and interests of another person shall not be jeopardized.

Article 8 Where other laws specially provide for the property right otherwise, the provisions there shall prevail.

## Chapter II Creation, Alteration, Transfer and Extinction of the Property Right

### Section 1 Registration of the Immovables

Article 9 The creation, alteration, transfer or extinction of the property right shall become valid upon registration according to law; otherwise it shall not become valid, unless otherwise provided for by law.

Registration of ownership of all the natural resources which are owned by the State in accordance with law may be dispensed with.

Article 10 Registration of the immovables shall be handled by the registration authority at the place where they are located.

The State practices a unified system of registration with respect to the immovables. The scope of unified registration, the registration authority and the measures for registration shall be stipulated by law and administrative regulations.

Article 11 To apply for registration, the party concerned shall, on the basis of the different matters for registration, submit the certificate of the attribution of right and the necessary materials on boundary and the area of the immovables, etc.

Article 12 The registration authority shall perform the following duties:

- (1) to examine the certificate of the attribution of right and the other necessary materials submitted by the applicant;
- (2) to inquire of the applicant about the matters for registration;
- (3) to register the relevant matters truthfully and in a timely manner; and
- (4) to perform the other duties provided for by laws and administrative regulations.

Where further certification of the condition of the immovables, the registration of which is applied for, is needed, the registration authority may require the applicant to supplement the materials and may, when necessary, check them on the spot.

Article 13 The registration authority shall not do any of the following:

- (1) demanding evaluation of the immovables;
- (2) making repeated registration in the name of annual inspection, etc.; or
- (3) doing other things beyond the limits of its duty for registration.

Article 14 Where the creation, alteration, transfer and extinction of the property right of the immovables are required to be registered according to the provisions of law, they shall become valid as of the time when they are entered in the register of the immovables.

Article 15 The contract made between the parties concerned on the creation, alteration, transfer or extinction of the property right of the immovables shall become valid as of the time when the contract is concluded, unless otherwise provided for by law or agreed upon in the contract; and where the property right is not registered, it shall not affect the validity of the contract.

Article 16 The register of the immovables provides the basis for the attribution and contents of the property right.

The register of the immovables shall be kept by the registration authority.

Article 17 The right attribution certificate of the immovables is the proof that the obligee is entitled to the property right of the said immovables. The items recorded in the right attribution certificate of the immovables shall be consistent with what is recorded in the register of the immovables; and in case of inconsistencies, what is recorded in the register of the immovables shall be taken as the standard unless there is evidence to prove that there are errors in what is recorded in the register of the immovables.

Article 18 The obligee or the interested party may apply for consulting and duplicating the registered information, and the registration authority shall provide such materials accordingly.

Article 19 Where the obligee or the interested party believes that there are errors in what is recorded in the register of the immovables, he may apply for correction. Where the obligee recorded in the register of the immovables agrees in written form to make corrections or there is evidence to prove that there are definitely errors in the registration, the registration authority shall make corrections accordingly.

Where the obligee recorded in the register of the immovables disagrees on making corrections, the interested party may apply for the registration of disagreement. Where the registration authority registers the disagreement, the applicant in question fails to file a lawsuit within 15 days from the date the disagreement is registered, such a registration shall become invalid. If damages are caused to the obligee due to inappropriate registration of disagreement, the obligee may request the applicant to make compensation.

Article 20 When the party concerned intends to sign an agreement on the purchase or sale of a house or other property right of immovables, he may, in accordance with what is agreed upon, apply to the registration authority in advance for registration, in order to ensure the realization of his property right in future. Where after the registration is made in advance, such immovables are disposed of without the consent of the obligee who is recorded in the registration in advance, the property right of such immovables shall be invalid.

Where after the registration is made in advance, the creditor's rights extinguish or no application for registration of the immovables is made within three months from the date when such registration can be made, the registration made in advance shall become invalid.

Article 21 Where the party concerned submits false materials when applying for registration, thus causing damages to another person, he shall be liable for compensation.

Where damages are caused to another person due to the errors made in registration, the registration authority shall be liable for compensation. After making the compensation, the said authority may have recourse to the person who makes the errors in registration.

Article 22 Charges for registration of the immovables shall be collected piece by piece and shall not be collected on the basis of the areas or sizes of the immovables or in proportion to the purchase prices. The specific rates for the charges shall be prescribed by relevant department under the State Council together with the department of pricing.

## Section 2 Delivery of the Movables

Article 23 The creation or transfer of the property right of the movables shall become valid as of the time of their delivery, unless otherwise provided for by law.

Article 24 Before registration, the creation, alteration, transfer or extinction of the property right of the vessels, aircraft, motor vehicles, etc. shall not be used against a bona fide third party.

Article 25 Where an obligee has already possessed the movables according to law prior to the creation or transfer of the property right of such movables, the property right shall become valid as of the time when such legal act becomes effective.

Article 26 Where a third party has taken possession of the movables according to law prior to the creation or transfer of the property right of the said movables, the person who is obligated to deliver the movables may do so, instead, through transferring the right of requesting the third party to return the original movables.

Article 27 Where both parties agree that the transferor continues to possess the movables while the property right of such movables is being transferred, the said property right shall be valid as of the time when the said agreement becomes effective.

### Section 3 Other Provisions

Article 28 Where the property right is created, altered or transferred or extinguishes in accordance with the legal document of a people's court or an arbitration committee or a decision made by a people's government on expropriation, etc., such creation, alteration, transfer and extinction shall become valid as of the time when the said document or decision comes into effect.

Article 29 Where the property right is obtained through inheritance or acceptance of legacy, such property right shall become valid as of the time of inheritance or acceptance of legacy.

Article 30 Where the property right is created or extinguishes due to such factual acts as lawful construction and demolition of houses, such property right shall become valid as of the time when the factual acts are achieved.

Article 31 Where a person enjoys the property right over the immovables in accordance with the provisions of Articles 28 through 30 of this Law, and registration is required according to the provisions of laws, when such property right is disposed of, the property right shall be invalid if no registration is made.

### Chapter III Protection of the Property Right

Article 32 Where the property right is encroached on, the obligee may have the matter settled by means of conciliation, mediation, arbitration or litigation.

Article 33 Where a dispute arises over the attribution or contents of the property right, the interested parties may request confirmation of their right.

Article 34 Where a person takes possession of the immovables or movables without the right to do so, the obligee may request return of the original immovables or movables.

Article 35 Where the property right is impaired or is likely to be impaired, the obligee may request removal of such impairment or elimination of the potential danger.

Article 36 Where the immovables or movables are damaged or destroyed, the obligee may request repairs, reconstruction or remaking, replacement or restoration to their original state.

Article 37 Where the infringement of the property right causes damages to an obligee, the obligee may request compensation for the damages and may also request the infringing party to assume other civil liabilities.

Article 38 The forms for protection of the property right as provided for in this Chapter may be applied separately and may also be applied otherwise, depending on the circumstances of infringement.

Apart from bearing civil liability for infringement on the property right, a person who, in addition, violates the administrative provisions shall bear administrative liability according to law; and if a crime is constituted, he shall be investigated for criminal liability according to law.

## Part Two Ownership

### Chapter IV General Stipulations

Article 39 Owners of immovables or movables shall be entitled to possess, use, benefit from and dispose of the immovables or movables according to law.

Article 40 On their own immovables or movables, owners shall have the right to create usufruct and security interest. In exercising their rights, the usufructuaries or guarantors shall not impair the rights and interests of the owners.

Article 41 No units or individuals shall be allowed to acquire ownership of the immovables and movables which are exclusively owned by the State as are provided for by law.

Article 42 For public interests, land owned by the collectives, and the houses and other immovables of units and individuals may be expropriated within the limits of power and in compliance with the procedures provided for by law.

Where land owned by the collective is expropriated, such fees as compensations for the land expropriated, subsidies for resettlement and compensations for the attachments and the young crops on land shall be paid in full according to law, and the premiums for social insurance of the farmers whose land is expropriated shall be arranged in order to guarantee their daily lives and safeguard their lawful rights and interests.

Where houses and other immovables of units or individuals are expropriated, compensations for their resettlement shall be paid according to law, and their lawful rights and interests shall be protected; and where the housings of individuals are expropriated, their living conditions shall be guaranteed.

No units or individuals shall embezzle, misappropriate, privately divide, withhold or default on payment of such fees as the compensations for expropriation.

Article 43 The State provides cultivated land with special protection through strictly restricting the transformation of the farmland into land for construction and keeping under control the total



amount of land used for construction. No land owned by the collectives shall be expropriated in violation of the limits of power and in compliance with the procedures as provided for by law.

Article 44 In order to meet such urgent needs as rushing to rescue or providing disaster relief, the immovables or movables of units or individuals may be requisitioned within the limits of power and in compliance with the procedures as provided for by law. After the use of the requisitioned immovables or movables, they shall be returned to the units or individuals whose immovables or movables are requisitioned. Where the immovables or movables of units or individuals are requisitioned or if they are damaged or lost thereafter, compensations shall be made therefor.

## Chapter V Ownership of the State, the Collective and the Individual Person

Article 45 The property owned by the State as is provided for by law belongs to the State, that is, the entire people.

The State Council shall exercise ownership of State-owned property on behalf of the State; and where laws provide for otherwise, the provisions there shall prevail.

Article 46 All mineral resources, waters and sea areas belong to the State.

Article 47 Land in the cities belongs to the State. Land in the rural and suburban areas which belongs to the State as is provided for by law is owned by the State.

Article 48 Such natural resources as forests, mountains, grasslands, wasteland and tidal flats belong to the State, except where they belong to the collectives as is provided for by law.

Article 49 All resources of the wildlife that belong to the State, as is provided for by law, are owned by the State.

Article 50 All resources of radio-frequency spectrum belong to the State.

Article 51 All cultural relics that belong to the State, as is provided for by law, are owned by the State.

Article 52 All assets for national defense belong to the State.

All infrastructures such as railways, highways, power facilities, telecommunications facilities and oil and gas pipelines that belong to the State in accordance with the provisions of law are owned by the State.

Article 53 Government departments are entitled to possess and use the immovables and movables directly under their control and to dispose of them in accordance with laws and the relevant regulations of the State Council.

Article 54 Institutions sponsored by the State shall have the right to possess and use the immovables and movables directly under their control and to benefit from and dispose of them in accordance with laws and the relevant regulations of the State Council.

Article 55 With respect to enterprises invested by the State, the State Council or the local people's governments shall, in accordance with the provisions of laws and administrative regulations, perform the duties of the investors on behalf of the State and enjoy the rights and interests of the investors.

Article 56 The property owned by the State shall be protected by law, and illegal possession, looting, privately dividing, withholding or destruction of such property by any units or individuals shall be prohibited.

Article 57 The authority performing the duties of administration and supervision over State-owned property and its staff members shall, according to law, exercise vigorous administration and supervision over State-owned property, promote the preservation and increase of the value of such property, and prevent its loss; and where losses are caused to State-owned property due to their abuse of power or dereliction of their duties, they shall bear legal liability according to law.

Where, in violation of the provisions governing the management of State-owned property, losses are caused to such property due to transferring it at a low price, privately dividing it in conspiracy with other persons, creating security on it without authorization or by other means in the course of enterprise restructuring, merger or division, affiliated transaction, etc., legal liability shall be borne according to law.

Article 58 The immovables and movables owned by the collective include the following:

- (1) the land, forests, mountains, grasslands, wasteland and tidal flats belong to the collective, as is provided for by law;
- (2) the buildings, production equipment, water conservancy facilities of farmland that are owned by the collective;
- (3) the educational, scientific, cultural, public health and sports facilities that are owned by the collective; and
- (4) other immovables and movables owned by the collective.

Article 59 The immovables and movables collectively owned by the farmers belong to the members of the collective.

The following matters shall be subject to decision by the members of a given collective in accordance with the statutory procedure:

- (1) plans for contracting of land, and subcontracting of land to other units or to individuals other than those belonging to the collective;
- (2) adjustment to be made to the contracted land by the individual persons among themselves who have the right to land contractual management;

- (3) methods for the use and distribution of such fees as compensations paid for land;
- (4) such matters as change in ownership of the enterprises invested by the collective; and
- (5) other matters as provided for by law.

Article 60 With respect to the land, forests, mountains, grasslands, wasteland, tidal flats, etc. owned by the collective, the right of their ownership shall be exercised in accordance with the following provisions:

- (1) For those owned by the collective of farmers of a village, the collective economic organization of the village or the villagers' committee shall exercise the right of ownership on behalf of the collective;
- (2) For those respectively owned by two or more collectives of farmers within a village, the collective economic organizations or villagers' teams concerned within the village shall exercise the right of ownership on behalf of the collectives; and
- (3) For those owned by the collective of farmers of a town or township, the collective economic organization of the town or township shall exercise the right of ownership on behalf of the collective.

Article 61 With respect to the immovables and movables owned by a collective of a town or township, the said collective shall, in accordance with the provisions of laws and administrative regulations, have the right to possess, use, benefit from and dispose of such immovables and movables.

Article 62 The collective economic organization or the villagers' committee or team shall, in accordance with laws and administrative regulations as well as the articles of association, village rules and farmers' agreements, make the position of the collective property known to the members of the collective.

Article 63 The property owned by the collective shall be protected by law, and illegal possession, looting, privately sharing, and destruction of such property by any units or individuals shall be prohibited.

Where a decision made by a collective economic organization, or villagers' committee or by the leading person of the organization or committee encroaches on the lawful rights and interests of the members of the collective, the said members may apply to a people's court for reversing such decision.

Article 64 All individual persons shall be entitled to enjoy ownership of such immovables and movables as their lawful incomes, houses, articles for daily use, tools of production, and raw and semi-finished materials.

Article 65 The lawful savings and investments of individual persons and the gains derived there from are protected by law.

The State protects, in accordance with the provisions of law, the right of individual persons to inheritance and their other lawful rights and interests.

Article 66 The lawful property of individual persons is protected by law, and illegal possession, looting and destruction of such property by any units or individuals are prohibited.

Article 67 The State, the collective or the individual person may, in accordance with law, invest to establish companies with limited liability, companies limited by shares or other enterprises. Where the immovables or movables owned by the State, the collective or the individual person are invested in enterprises, the investor shall have such rights as receiving benefits derived from the assets, making major decisions and selecting managers, and shall perform it/his duties, in accordance with what is agreed upon or in proportion to the amount of investment.

Article 68 An enterprise legal person has the right to possess, use, benefit from and dispose of his immovables and movables in accordance with laws and administrative regulations as well as the articles of association.

The rights enjoyed by legal persons other than enterprise legal persons with respect to their immovables and movables shall be governed by the provisions of relevant laws and administrative regulations as well as the articles of association.

Article 69 The immovables and movables owned by public organizations according to law are protected by law.

## Chapter VI Condominium Right of Property Owners

Article 70 Property owners shall enjoy ownership of the special parts within a building, such as the residential units and the units for business purposes and shall enjoy the right to share and jointly manage the common parts other than the special parts.

Article 71 An owner shall enjoy the rights of possession, use, benefiting from and disposition of the part exclusively owned by him within a building. In exercising his rights, the owner shall not endanger the safety of the building or infringe on the lawful rights and interests of other owners therein.

Article 72 An owner shall enjoy rights and fulfill obligations with respect to the common parts of a building other than the special parts, and shall not refuse to fulfill the obligations by forfeiting his rights.

When an owner transfers a residential unit or a unit for business purposes owned by him within a building, his right to share and jointly manage the common parts shall be transferred along.

Article 73 The roads in the district of a building shall be jointly owned by all the owners, with the exception of the public roads belonging to a city or township. The greens within the district of a building shall be jointly owned by all the owners, with the exception of the public greens

belonging to a city or township, and the greens belonging to individual persons, as is clearly indicated. Other public spaces, public facilities and houses or rooms used for property management within the district of a building shall be jointly owned by all the owners.

Article 74 In the district of a building, the designed parking places and garages shall first be used to meet the need of the owners.

In the district of a building, ownership of the designed parking places and garages shall be decided on through agreement among the parties concerned, by such means as selling, giving away as gifts, and leasing.

The roads and other places commonly owned by all the owners which are used for parking vehicles shall be jointly owned by all the owners.

Article 75 The owners may form an owners' assembly and elect an owners' committee.

The department concerned of the local people's government shall give guidance and assistance to the formation of an owners' assembly and the election of an owners' committee.

Article 76 The following matters shall be decided on by all the owners:

- (1) formation and revision of the rules of procedure of the owners' assembly;
- (2) formation and revision of the rules and agreement on managing the buildings and the attached facilities;
- (3) election of the owners' committee or replacement of its members;
- (4) employment or removal of the property management service or other managers;
- (5) raising and use of funds for the maintenance of a building and its attached facilities;
- (6) renovation and reconstruction of a building and its attached facilities; and
- (7) other major matters relating to joint ownership and joint management rights.

For decision on the matters specified in Subparagraphs (5) and (6) of the preceding paragraph, an agreement shall be reached by the owners whose ownership of the exclusive parts within the building in question accounts for two-thirds or more of the total construction area of the building and who account for two-thirds or more of the total number of the owners. For decision on the rest of the matters specified in the preceding paragraph, an agreement shall be reached by the owners whose ownership of the exclusive parts in the building accounts for more than half of the total construction area of the building and who account for more than half of the total number of the owners.

Article 77 No owners may, in violation of the relevant laws, regulations or the management rules and agreements, turn a residential unit into a unit for business purposes. If an owner intends to do so, he shall, in addition to observing the relevant laws, regulations and the management rules and agreements, obtain the consent of the interested owners.

Article 78 The decisions of the owners' assembly or the owners' committee shall be binding to all the owners.

If a decision made by the owners' assembly or the owners' committee infringes on the lawful rights and interests of an owner, the said owner may apply to a people's court for voiding of the decision.

Article 79 The funds for maintenance of a building and its attached facilities shall belong to all the owners, which, upon their common decision, may be used for maintaining and repairing the common parts such as the elevators and water tanks. The raising and use of such funds shall be made public.

Article 80 The apportioning of the expenses for a building and its attached facilities and the distribution of benefits therefrom shall follow the agreement reached; if there is no such agreement or the agreement is unclear, such apportioning and distribution shall be determined on the basis of the ratio of the area of the exclusive parts an owner owns to the total construction area of the building.

Article 81 Owners may manage the building and its affixtures by themselves, or entrust the matter to a property management service or other managers.

The owners shall, according to law, have the right to replace the property management service or other managers employed by the developer.

Article 82 The property management service or other managers shall manage the building and its affixtures within the district of the building, as entrusted by the owners, and shall be subject to supervision by the owners.

Article 83 Owners shall observe the relevant laws and regulations and the management rules and agreements.

With respect to a person who randomly discards garbage, discharges pollutants, makes noises, keeps animals in violation of regulations, erects structures against rules, occupies passages, refuses to pay property management fees, etc., thus infringing on the lawful rights and interests of another person, the owners' assembly and the owners' committee shall, according to the relevant laws and regulations and the management rules and agreements, have the right to require the person to discontinue such infringement, eliminate the hazards, clear away the obstructions and compensate the losses entailed. The owner whose lawful rights and interests are infringed on may bring a lawsuit to the people's court against such acts.

## Chapter VII Neighboring Relations

Article 84 Owners of neighboring immovables shall properly deal with their neighboring relations in adherence to the principles of conduciveness to production, convenience for daily lives, unity and mutual help, and fairness and rationality.

Article 85 Where there are laws or regulations governing neighboring relations, the provisions there shall prevail; otherwise, such relations shall be dealt with in accordance with local customs.

Article 86 An owner of immovables shall provide the necessary convenience to a neighboring obligee in the use or discharge of water.

The natural flowing waters shall be reasonably distributed among the neighboring obligees of immovables. The direction of natural flow shall be set store by where discharge of such water is concerned.

Article 87 Where a neighboring obligee has to use for passage, etc. the land of an obligee of immovables, the latter shall provide the necessary convenience to the former.

Article 88 Where an obligee of immovables, for constructing or maintaining a building, or laying wires, cables, or pipelines for water, heating or gas, has to use the neighboring land or building, the owner of the said land or building shall provide the necessary convenience accordingly.

Article 89 In construction of a building, ventilation, light and sunshine of the neighboring building shall not be blocked in violation of the relevant construction standards of the State.

Article 90 An obligee of immovables shall not, in violation of State regulations, discard solid waste or discharge hazardous substances, such as air and water pollutants, noises, and optical and electromagnetic radiation.

Article 91 When digging, constructing a building, laying pipelines or installing facilities, etc., an owner of immovables shall not endanger the neighboring immovables.

Article 92 When making use of the neighboring immovables for the drawing or draining off of water, for passage or for laying of pipelines, an owner of immovables shall do the best to avoid causing damage to the owner of the neighboring land; if damage is caused, he shall compensate for the damage.

## Chapter VIII Co-ownership

Article 93 Immovables or movables may be co-owned by two or more units or individuals. Co-ownership consists of shared ownership and joint ownership.

Article 94 Persons who share the ownership of immovables or movables shall enjoy the ownership in proportion to the amount of their shares.

Article 95 Persons who jointly own immovables or movables shall enjoy the ownership jointly.

Article 96 Co-owners shall manage the immovables or movables they own as agreed upon; if there is no agreement or the agreement is indefinite in this respect, all the co-owners shall have the right and duty of management.

Article 97 Disposing of or making major repairs to the co-owned immovables or movables shall be subject to agreement reached by the co-owners who possess two-thirds or more of the total shares or by all of the joint owners, except where the owners agree otherwise.

Article 98 The fees for managing what is co-owned and other expenses shall be paid according to agreement; if there is no such agreement or the agreement is indefinite in this respect, they shall be paid by the persons who share the ownership in proportion to the amounts of their respective shares, or jointly paid by the joint owners.

Article 99 Where the co-owners have agreed not to sever the immovables or movables owned by them in order to maintain the co-ownership, such agreement shall be complied with; however, if a co-owner has major reasons for severing them, he may make a request for severance; where there is no such agreement or the agreement is indefinite in this respect, a person who shares the ownership may make a request for severance at any time, while a joint owner may do so if the basis for joint ownership no longer exists or he has major reasons for severance. Where the severance causes losses to the other co-owners, they shall be compensated for the losses.

Article 100 The co-owners may decide on the method for severance through consultation. If they fail to reach an agreement, and the immovables or movables owned by them can be severed and its value will not be reduced because of such severance, the actual property shall be severed; if it is difficult to sever the property or its value will be reduced because of such severance, the severance shall be made after the property is converted into money, or auctioned, or sold.

If the immovables or movables of a co-owner obtained from the severance is flawed, the other co-owners shall share the losses.

Article 101 A co-owner who shares ownership of the immovables or movables shall have the right to transfer his own share. The other co-owners shall have the priority to purchase under equal conditions.

Article 102 In external relations, the co-owners shall have joint and several claims arising from the immovables or movables owned by them and bear joint and several liability for the debts arising likewise, except where laws provide otherwise or where a third party is aware that the co-owners are not associated in the aforesaid manner; in internal relations, unless otherwise agreed upon by the co-owners, the co-owners who share the ownership shall enjoy the claims and bear liability for the debts in proportion to the amounts of their respective shares, while the joint owners shall jointly enjoy the claims and bear liability for the debts. Where a person who shares ownership pays debts in excess of his share, he shall have the right to recourse from the other co-owners.

Article 103 Where the co-owners fail to reach an agreement either on shared or on joint ownership of the immovables or movables, or the agreement reached is indefinite in this respect, the ownership shall be deemed to be shared ownership, unless the co-owners are of a family or have other relations.

Article 104 Where the shares of immovables or movables are not agreed upon among the persons who share the ownership, or the agreement reached is indefinite in this respect, their shares shall be determined on the basis of the amounts of their respective capital contributions; if it is difficult



to determine the amounts of capital contributions, the immovables or movables shall be deemed to be shared equally among them.

Article 105 Where two or more entities or individuals jointly enjoy usufructs or security interest, the provisions in this Chapter shall be applied *mutatis mutandis*.

## Chapter XV Special Provisions on Acquisition of Ownership

Article 106 Where a person transfers to a transferee immovables or movables which he has no right to dispose of, the owner shall have the right to recover them; except where otherwise provided for by law, the transferee shall acquire ownership of the said immovables or movables under one of the following circumstances:

- (1) The transferee is in good faith when the said immovables or movables are transferred to him;
- (2) The transfer is made at a reasonable price; or
- (3) The said immovables or movables have duly been registered as is required by law, or have been delivered to the transferee where no registration is required.

Where a transferee acquires the ownership of the immovables or movables in accordance with the provisions in the preceding paragraph, the original owner shall have the right to request the person who has no right of disposition to compensate for the losses.

Where a party acquires other property rights in good faith, the preceding two paragraphs shall be applied *mutatis mutandis*.

Article 107 An owner or any other obligee shall have the right to recover a lost-and-found thing. Where the thing comes to be possessed by another person through transfer, the obligee shall have the right to request the person who has no right of disposition to compensate for the losses or, within two years from the date he becomes, or ought to become, aware of the transferee, request the transferee to return the lost thing, however, if the lost thing is purchased by the transferee at auction or from a qualified seller, the obligee shall, when requesting the transferee to return the original thing, compensate the transferee for the expenses the latter has paid for the thing. After the obligee compensates the transferee for the expenses, he shall have the right to recover the payment he has made from the person who has no right of disposition.

Article 108 After a bona fide transferee acquires a piece of movables, the rights previously attached to the said piece shall extinguish, unless where the bona fide transferee is or ought to be aware of the attached rights at the time of transfer of the piece.

Article 109 A person who finds a lost thing shall return it to the obligee. The finder shall, in a timely manner, give a notice to the obligee asking him to take it back, or deliver it to the public security organ or relevant departments.

Article 110 Where the relevant department that receives a found thing knows who the obligee is, it shall, without delay, give a notice to the obligee to notify the obligee asking him to take the thing back; otherwise, it shall publish a notice of the finding of the lost thing without delay.

Article 111 Before a finder delivers a found thing to the relevant department and before the lost thing is taken back from the department, both the finder and the department shall safekeep the thing. If, the thing in his or its safekeeping is damaged, destroyed or lost intentionally or through gross negligence, he or it shall bear civil liability therefor.

Article 112 When an obligee goes to take back the thing he lost, he shall pay to the finder or the relevant department the necessary expenses entailed by safekeeping, etc.

Where an obligee offers a reward for the finding of the thing he lost, he shall fulfill his obligation as promised when taking the thing back.

Where a finder illegally takes into his own possession a lost thing, he shall have no right to request the expenses paid for the safekeeping of the thing, nor shall he have the right to request the obligee to fulfill the obligation as promised.

Article 113 A lost thing shall belong to the State if no one goes to claim it within six months from the date the notice of the finding of the thing is published.

Article 114 The provisions governing the finding of lost things shall be applied *mutatis mutandis* to the finding of drift-stuff or buried or hidden things. Where the laws such as the Law on Protection of Cultural Relics provide for otherwise, the provisions there shall prevail.

Article 115 Where the principal part of a thing is transferred, the ancillaries shall be transferred along with it, except where the parties concerned agree otherwise.

Article 116 The natural fruits of a thing shall go to the owner; if there are both owner and usufructuary, the fruits shall go to the usufructuary. Where the parties concerned agree otherwise, their agreement shall prevail.

The statutory fruits of a thing shall go to the party as agreed upon if there is an agreement between the parties concerned; if there is no such agreement or the agreement in this respect is indefinite, the fruits shall be acquired according to the customs of transaction.

### Part Three Usufructs

## Chapter X General Stipulations

Article 117 A usufructuary shall, according to law, have the right to possess, use and benefit from the immovables or movables owned by another.

Article 118 Units or individuals may, according to law, possess, use and benefit from the natural resources which are owned by the State, or owned by the State but used by the collective, or owned by the collective as stipulated by law.

Article 119 The State shall apply a system of compensated use of natural resources, unless otherwise stipulated by law.

Article 120 In exercising his rights, the usufructuary shall observe the provisions of law governing the protection and reasonable exploitation and utilization of resources. The owner shall not interfere with the exercise of rights by the usufructuary.

Article 121 The usufructuary shall, in accordance with the provisions of Articles 42 and 44 of this Law, get appropriate compensation when his usufruct extinguishes or the exercise of his usufruct is limited due to expropriation or requisition of the immovables or movables.

Article 122 The right to the use of sea areas that is obtained in accordance with law shall be protected by law.

Article 123 The rights to prospecting for mineral deposits, mining, water taking, and the rights to the use of waters or tidal flats for aquaculture or fishing, which are obtained in accordance with law, shall be protected by law.

## Chapter XI The Right to Land Contractual Management

Article 124 Rural collective economic organizations apply the dual management system characterized by the combination of centralized management with decentralized management on the basis of management by households under a contract.

The contractual management system shall, in accordance with law, be applied to the cultivated land, forestlands, grasslands and other land used for agriculture, which are owned collectively by the farmers or by the State but used collectively by the farmers.

Article 125 Contractors for the right to land management shall, in accordance with law, have the right to possess, use, and benefit from the cultivated land, forestlands, grasslands, etc. which are under their contractual management, and shall have the right to engage in agricultural production, including crop cultivation, forestry and animal husbandry.

Article 126 The term of contract for cultivated land is 30 years. The term of contract for grasslands ranges from 30 to 50 years. The term of contract for forestlands ranges from 30 to 70 years; and that for forestlands where special trees grow may be extended upon approval by the competent administrative department for forestry under the State Council.

At the expiration of the term of contract stipulated in the preceding paragraph, the contract may be renewed by the contractor for the right to land management in accordance with the relevant regulations of the State.

Article 127 The right to land contractual management shall be established as of the date the contract for the right to land management becomes valid.

Local people's governments at or above the county level shall issue to the contractors for the right to land management certificates of the right to land contractual management, certificates of the right to use forestlands, or certificates of the right to use grasslands, and shall have them registered to confirm their right to land contractual management.

Article 128 Contractors for the right to land management shall, in accordance with the provisions of the Law on Land Contract in Rural Areas, have the right to circulate the right to land contractual management by subcontracting, exchanging or transferring the right or by other means. The term of circulation may not exceed the remaining period of the term of a contract. Without approval as granted according to law, no contracted land may be used for non-agricultural development.

Article 129 When contractors for the right to land management exchange or transfer the said right and the parties concerned request registration, they shall apply to the local people's governments at or above the county level for alteration of the registration of the right to land contractual management. Where such registration is lacking, it shall not be used against a bona fide third party.

Article 130 During the term of contract, the party giving out the contract may not readjust the contracted land.

When the contracted cultivated land or grasslands need to be readjusted appropriately under the special circumstances in which the contracted land or grasslands are seriously damaged due to natural disasters, the matter shall be handled in accordance with the provisions of the Law on Land Contract in Rural Areas, etc.

Article 131 During the term of contract, the party giving out the contract may not take back the contracted land. Where the Law on Land Contract in Rural Areas and other laws provide otherwise, the provisions there shall apply.

Article 132 Where the contracted land is expropriated, the contractors for the right to land management shall be entitled to corresponding compensation in accordance with the provisions of the second paragraph of Article 42 of this Law.

Article 133 Where a person enters into a contract for the right to rural land such as barren land through bidding, auction, open consultation or other means, his right to land contractual management may, in accordance with such laws as the Law on Land Contract in Rural Areas and the relevant regulations of the State Council, be circulated through transfer, pooling of rights as shares, mortgage or other means.

Article 134 Where contractual management is applied to the land owned by the State which is used for agricultural purposes, the relevant provisions of this Law shall be followed *mutatis mutandis*.

## Chapter XII The Right to the Use of Land for Construction

Article 135 A person who enjoys the right to the use of land for construction shall, according to law, possess, use and benefit from the land owned by the State, and shall have the right to use the land for erecting buildings and structures and the facilities attached to them.

Article 136 The right to the use of land for construction may be separately created on the surface, above or under the ground. The newly created right to the use of land for construction shall not infringe on the usufruct which has already been created thereon.

Article 137 The right to the use of land for construction may be created by assignment, allocation or other means.

Where land is used for industrial, commercial, tourist or entertaining purposes, as commodity residences, or for other profit-making purposes, or there are two or more persons who are willing to use the same piece of land, the right to the use of land for construction shall be assigned through bid invitation, auction or other open bidding.

Creation of the right to the use of land for construction through allocation shall strictly be controlled. Creation of the right by such means shall be done in compliance with the provisions of laws and administrative regulations governing the purposes of use of land.

Article 138 Where the right to the use of land for construction is created through bid invitation, auction, agreement or by other means of assignment, the parties shall enter into a contract for assigning the right to the use of land for construction in written form.

A contract for assigning the right to the use of land for construction generally contains the following particulars:

- (1) names and addresses of the parties;
- (2) the boundary and the area of the land;
- (3) the space occupied by the buildings and structures and the facilities attached to them;
- (4) purposes of use of land;
- (5) the period of time for use;
- (6) payment for the assigning and other fees, and the manners of payment; and
- (7) means for settlement of disputes.

Article 139 For creating the right to the use of land for construction, an application for registration of such right shall be made to the registration authority. The right to the use of land for construction shall be deemed to be created as of the time of registration. The registration authority shall issue to the person who is granted the right to the use of land for construction the certificate of the right to the use of land for construction.

Article 140 Persons who enjoy the right to the use of land for construction shall make rational use of the land and shall not change the purposes of use of the land; if the purposes of use need to be

changed, the matter shall be subject to approval by relevant administrative departments according to law.

Article 141 The persons who enjoy the right to the use of land for construction shall, in accordance with the provisions of law and the stipulations in the contract, pay the expenses for assignment and other fees.

Article 142 Ownership of the buildings and structures and the facilities attached to them that the person who enjoys the right to the use of land for construction has constructed belongs to the said person, unless there is evidence to prove the contrary.

Article 143 A person who enjoys the right to the use of land for construction shall have the right to transfer, exchange, offer as capital contributions, give as a gift or mortgage such right, except where otherwise provided for by law.

Article 144 Where the right to the use of land for construction is transferred, exchanged, offered as capital contributions, given as a gift or mortgaged, the parties shall enter into a contract in written form accordingly. The period of time for use shall be agreed upon by the parties, provided that the remaining period of time for the right to the use of land for construction is not exceeded.

Article 145 Where the right to the use of land for construction is to be transferred, exchanged, offered as capital contributions, or given as a gift, an application for alteration of registration shall be made to the registration authority.

Article 146 Where the right to the use of land for construction is transferred, exchanged, offered as capital contributions, or given as a gift, the buildings and structures and the facilities attached to them which are attached to the said land shall be disposed of along with it.

Article 147 Where buildings and structures and the facilities attached to them are transferred, exchanged, offered as capital contributions, or given as a gift, the right to the use of the land for construction to which the said buildings and structures and facilities are attached shall be disposed of along with them.

Article 148 Where, before the expiration of the period of time for the right to the use of land for construction, the land needs to be taken back for public interests, compensations for the houses and other immovables on the land shall be paid in accordance with the provisions of Article 42 of this Law, and the fees paid for assignment shall appropriately be returned.

Article 149 When the period of time for the right to the use of land for construction of residences expires, it shall automatically be renewed.

Renewal of the period of time for the right to the use of land for nonresidential construction shall be handled in accordance with the provisions of law. Ownership of the houses and other immovables on the said land shall be decided on according to the agreement reached; if there is no agreement or the agreement on the matter is indefinite, it shall be decided in accordance with the provisions of laws and administrative regulations.

Article 150 When the right to the use of land for construction lapses, the assignor shall have his registration cancelled in time. The registration authority shall take back the certificate of the right to the use of land for construction.

Article 151 Where land owned by the collective is to be used for construction purposes, the matter shall be handled according to the provisions of the Land Administration Law and of other laws

### Chapter XIII The Right to the Use of House Sites

Article 152 Persons with the right to the use of house sites who, according to law, enjoy the right to possess and use the land owned by the collective, shall have the right to use the land for constructing residences and the facilities to be attached to them according to law.

Article 153 Such laws as the Land Administration Law and the relevant State regulations shall be applicable to the obtaining, exercising and transferring of the right to the use of house sites.

Article 154 When house sites disappear due to natural disasters or other reasons, the right to the use of the house sites extinguishes. New house sites shall be allocated to the villagers who lose their house sites.

Article 155 When the registered right to the use of house sites is transferred or extinguishes, registration of the change or cancellation of registration shall be handled in a timely manner.

### Chapter XIV Easement

Article 156 Easement holders shall, according to the stipulations in the contract, have the right to use another person's immovable property to get better results from his own immovables.

Another person's immovable property mentioned in the preceding paragraph is the servient estate, and one's own immovables are the dominant estate.

Article 157 For creating an easement, the parties shall enter into a contract for easement in written form.

The contract for easement generally includes the following particulars:

- (1) names or titles, and domiciles of the parties;
- (2) locations of the servient estate and the dominant estate;
- (3) purposes and means of use;
- (4) the period of time for use;

(5) fees and the manner of payment; and

(6) means to be used for settling disputes.

Article 158 An easement is created as of the time when the easement contract becomes valid. If the parties request registration, they may apply to the registration authority for registration of easement. Where the registration is lacking, such right may not be used against a bona fide third party.

Article 159 The obligee of the servient estate shall, according to what is stipulated in the contract, allow the easement holder to use his land and shall not obstruct the latter from exercising his right.

Article 160 The easement holder shall use the servient estate in conformity with the purposes and means of use as agreed upon in the contract and to lighten as much as possible the restrictions on the property right of the obligee of the servient estate.

Article 161 The period of time for an easement shall be agreed upon by the parties, provided that it does not exceed the remaining period for usufructs, such as the right to land contractual management and the right to the use of the land for construction.

Article 162 When the owner of a piece of land who enjoys, or is encumbered with an easement creates a right on the right to land contractual management or the right to the use of house sites, the contractor for the right to land contractual management or the user of the house sites shall continue to enjoy or be encumbered with the created easement.

Article 163 If on a piece of land is already created the right to land contractual management, the right to the use of the land for construction or the right to the use of house sites, etc., the owner of the piece of land shall not create any easement without the consent of the usufructuary.

Article 164 An easement shall not be transferred separately. When the right to land contractual management or the right to the use of land for construction is transferred, the easement shall be transferred along with it, unless the contract stipulates otherwise.

Article 165 An easement shall not be mortgaged separately. If the right to land contractual management or the right to the use of land for construction is mortgaged, the easement shall be transferred along with it at the time when the mortgage interest is enforced.

Article 166 When the dominant estate and part of the right to land contractual management or of the right to the use of land for construction thereon are transferred, if the part to be transferred involves easement, the transferee shall concurrently enjoy the easement.

Article 167 When the servient estate and part of the right to land contractual management or of the right to the use of land for construction thereon are transferred, if the part to be transferred involves easements, the easements shall be binding to the transferee.

Article 168 If an easement holder is under any of the following circumstances, the obligee of the servient estate shall have the right to terminate the easement contract, and the easement extinguishes:



- (1) abusing the easement in violation of the provisions of law or the contract; or
- (2) in the case of compensated use of the servient estate, at the expiration of the duration for payment as is agreed upon, failing to pay the fees after two exigents are given within a reasonable time limit.

Article 169 If a registered easement is altered, transferred or extinguishes, the alteration shall be registered or cancelled in a timely manner.

## Part Four Security Interest in Property

### Chapter XV General Stipulations

Article 170 Unless otherwise stipulated by law, the holder of security interests shall have the priority in having his claim paid if a debtor defaults or if the conditions for enforcement of the said interests, as agreed upon by the parties concerned, arise.

Article 171 Where, in the making of loans, in business transactions or other civil activities, a creditor needs a guarantee to have his claim honored, a security interest may be created in accordance with the provisions of this Law and other laws.

Where a third party provides a guarantee to a creditor for a debtor, the third party may require the debtor to provide him with a counter-guarantee. The relevant provisions of this Law and other laws shall be applicable to counter-guarantee.

Article 172 For creation of a security interest, a guarantee contract shall be concluded in accordance with the provisions of this Law and other laws. A guarantee contract is an ancillary contract of the principal claim-debt contract. When the principal claim-debt contract is null and void, the guarantee contract shall be null and void accordingly, unless otherwise provided for by law.

After it is confirmed that a guarantee contract is nullified, the debtor, the guarantor and the creditor who are in fault shall, on the merits of each case, bear civil liability respectively.

Article 173 The scope of security interest embraces the principal creditor's right and the interest therefrom, penalty, damages and expenses for safekeeping of the property used as security and for enforcing security interest. Where the parties concerned agree otherwise, their agreement shall prevail.

Article 174 In case of damage or destruction, loss or requisition of the mortgaged property during the period of guarantee, the holder of the security interest shall have priority in having his claim paid with the insurance monies, compensations or indemnities. The holder of security interest may also have the insurance monies, compensation payment or indemnities deposited with a third party before the time limit for payment of the guaranteed claim expires.

Article 175 Where a guarantee is provided by a third party, if the creditor permits the debtor to transfer part or all of his debts without the consent of the third party in written form, the guarantor shall not undertake the corresponding suretyship liability.

Article 176 Where both security and suretyship are provided to guarantee for the same claim, the creditor shall have his claim paid as agreed upon, if the debtor defaults or the conditions for enforcement of the interest, as agreed upon by the parties concerned, arise; where there is no such agreement or the agreement is indefinite in this respect, if the debtor himself provides property as security, the creditor shall have his claim paid with such property first; where a third party provides property as security, the creditor may either have his claim paid with such property or request the guarantor to undertake the suretyship. After the third party has borne the suretyship, he shall have the right of recourse against the debtor.

Article 177 The security interest shall extinguish under one of following circumstances:

- (1) The principal claim extinguishes;
- (2) The security interest is enforced;
- (3) The creditor waives the security interest; or
- (4) Other circumstances provided for by law under which the security interest extinguishes.

Article 178 In case of any inconsistencies between the provisions of the Guarantee Law and of this Law, those of this Law shall prevail.

## Chapter XVI Interests Obtained from Mortgage

### Section 1 General Interest Obtained from Mortgage

Article 179 Where a debtor or a third party, for guaranteeing the payment of debts, mortgages property to a creditor instead of transferring of the possession of such property, if the debtor defaults or the conditions for enforcement of the interest, as agreed upon by the parties concerned, arise, the creditor shall have priority in having his claim paid with the property.

The debtor or the third party specified in the preceding paragraph is the mortgagor, the creditor specified there is the mortgagee, and the property used as security is mortgaged property.

Article 180 The following property which the debtor or the third party is entitled to dispose of may be mortgaged:

- (1) buildings and other attachments on the ground;
- (2) the right to the use of land for construction;

- (3) the contractual management right to barren land, etc. obtained through bidding, auction, open consultation or other means;
- (4) production equipment, raw and semi-finished materials, semi-finished products and finished products;
- (5) buildings, vessels and aircraft under construction;
- (6) means of transportation; and
- (7) other property that is not prohibited from being mortgaged by laws or administrative regulations.

A mortgagor may mortgage all the property specified in the preceding paragraph at the same time.

Article 181 Subject to written agreement between the parties, enterprises, self-employed industrial and commercial households and agricultural producers and distributors may mortgage their existing and anticipated production equipment, raw and semi-finished materials, semi-finished products and finished products, and if the debtor defaults or the conditions for enforcement of the interest, as agreed upon by the parties concerned, arise, the creditor shall have priority in having his claim paid with the movables.

Article 182 Where a building is mortgaged, the right to the use of the land for construction within the area occupied by the building shall be mortgaged along with the building. Where the right to the use of the land for construction is mortgaged, the buildings on the land shall be mortgaged along with that right.

If the mortgagor fails to comply with what is provided for in the preceding paragraph, the property not mortgaged shall be deemed to be mortgaged along with what is mortgaged.

Article 183 The right to the use of the land for construction enjoyed by a town (township) or village enterprise may not be mortgaged separately. Where workshops and other buildings of a town (township) or village enterprise are mortgaged, the right to the use of the land for construction within the area occupied by the workshops or other buildings shall be mortgaged along with the workshops and other buildings.

Article 184 The following property may not be mortgaged:

- (1) land ownership;
- (2) the right to the use of the land owned by the collective, such as cultivated land, house sites, private plots and private hills, except where otherwise provided for by law;
- (3) educational facilities, medical and health facilities and other public welfare facilities of undertakings for public welfare, such as schools, kindergartens and hospitals and public organizations;
- (4) property the ownership or right to the use of which is indefinite or controversial;
- (5) property sealed up, distrained or placed under custody in accordance with law; and

(6) other property which may not be mortgaged as prescribed by laws and administrative regulations.

Article 185 To create a mortgage interest, the parties concerned shall conclude a mortgage contract in written form.

A mortgage contract generally includes the following particulars:

- (1) the kind and amount of claims secured;
- (2) the time limit for the debtor to repay the debt;
- (3) the name, quantity, quality, conditions, location or attribution of the ownership or the right to the use, of the mortgaged property; and
- (4) the scope of security interest.

Article 186 Before maturity of the debts, the mortgagee may not enter into an agreement with the mortgagor that the mortgaged property shall come under the ownership of the creditor when the debtor defaults.

Article 187 Where the property specified in Subparagraphs (1), (2) and (3), or the buildings under construction specified in Subparagraph (5), under the first paragraph of Article 180 of this Law are mortgaged, such mortgage shall be registered. The mortgage interest is created as of the date of registration.

Article 188 Where the property specified in Subparagraphs (4), (5) and (6), or the vessels and aircraft under construction specified in Subparagraph (5), under the first paragraph of Article 180 of this Law are mortgaged, the mortgage interest is created at the time when the mortgage contract becomes valid; if the mortgage interest is not registered, it shall not be used against a bona fide third party.

Article 189 Where an enterprise, a self-employed industrial or commercial household, or an agricultural producer or distributor mortgages movable property specified in Article 181 of this Law, it shall register with the administration department for industry and commerce at the place where the domicile of the mortgagor is located. The mortgage interest shall be created at the time when the mortgage contract becomes valid; if such interest is not registered, it shall not be used against a bona fide third party.

Where a mortgage is made in accordance with the provisions of Article 181 of this Law, it shall not be used against the buyer who has paid reasonable price and obtained the mortgaged property in the ordinary course of business operations.

Article 190 If a mortgagor leases the mortgaged property before the mortgage contract is concluded, the previously established leasing relation shall not be affected. If a mortgagor leases the mortgaged property after the creation of the mortgage interest, the leasing relation may not be used against the registered mortgage interest.

Article 191 If a mortgagor transfers the mortgaged property with the consent of the mortgagee during the period of mortgage, the proceeds which the mortgagor obtains from the transfer of the mortgaged property shall in advance be used to settle the claim secured by the mortgagee or be deposited with a third party. If the proceeds obtained from the transfer exceed the secured claim, the balance shall go to the mortgagor; if the proceeds is insufficient to cover the claim, the uncovered part shall be paid by the debtor.

The mortgagor may not transfer the mortgaged property without the consent of the mortgagee during the period of mortgage, unless the transferee pays off the debts for the mortgagor and thus the mortgage interest extinguishes.

Article 192 The mortgage interest may not be separated from the claim to be transferred independently, or to be used to secure another claim. If the claim is transferred, the interest of mortgage shall be transferred along with it, unless otherwise provided for by law or agreed upon by the parties.

Article 193 Where a mortgagor acts in such a way as to cause depreciation of the mortgaged property, the mortgagee shall have the right to demand that the mortgagor cease and desist from such act. Where the value of the mortgaged property depreciates, the mortgagee shall have the right to demand that the mortgagor restore the original value of the mortgaged property or provide security corresponding to the amount of the value reduced. Where a mortgagor fails to restore the original value of the mortgaged property or provide corresponding security, the mortgagee shall have the right to demand the debtor to settle the claim in advance.

Article 194 A mortgagee may waive his mortgage interest or his place in the order of mortgage interest. A mortgagee and a mortgagor may, upon agreement, change the place in the order of the mortgage interest, the amount of secured claims, etc., provided that such a change, without the written consent of other mortgagees, shall not have an adverse effect on other mortgagees.

Where a debtor uses his own property for mortgage, if a mortgagee waives his mortgage interest or his place in the order of the mortgage interest or makes changes in respect of his mortgage interest, other guarantors shall be exempted from the suretyship to the extent that the mortgagee forfeits his rights and interests in terms of the priority in being paid off, unless the said guarantors are still committed to the suretyship.

Article 195 Where the debtor defaults or the conditions for enforcement of the mortgage interest thereof, as agreed upon by the parties concerned, arise, the mortgagee may enter into an agreement with the mortgagor that he be given the priority in being paid with the money into which the mortgaged property is converted or the proceeds obtained from auction or sale of the property. If such agreement undermines the interests of other creditors, they may apply to the people's court for cancellation of the agreement within one year from the date they come to know or should have known the cause for cancellation.

If the mortgagee and mortgagor fail to reach an agreement on the means of enforcing the mortgage interest, the mortgagee may apply to the people's court for auction or sale of the mortgaged property.

The mortgaged property shall be converted into money or be sold off by referring to its market price.

Article 196 Where a mortgage interest is created in accordance with the provisions of Article 181 of this Law, the mortgaged property shall be established when one of the following circumstances arises:

- (1) The debts are not paid when they fall due;
- (2) The mortgagor is declared bankrupt or is dissolved;
- (3) The conditions for enforcement of the mortgage interest, as agreed upon by the parties concerned, arise; or
- (4) Other circumstances arise which may seriously affect the enforcement of the claim.

Article 197 If the mortgaged property is seized by a people's court according to law because the debtor defaults or the conditions for enforcement of the interest, as agreed upon by the parties concerned, arise, the mortgagee shall, from the date of the seizure, have the right to collect the natural or statutory fruits accrued from the mortgaged property, except where the mortgagee fails to notify the person who is obliged to pay the statutory fruits.

The fruits mentioned in the preceding paragraph shall first be used to pay off the expenses for collecting such fruits.

Article 198 If the proceeds obtained from conversion into money or from auction or sale of mortgaged property exceed the amount of a claim, the balance shall go to the mortgagor; and if the proceeds are insufficient to cover the claim, the uncovered part shall be paid by the debtor.

Article 199 Where a piece of property is mortgaged to two or more creditors, the proceeds from auction or sale of the mortgaged property shall be used for liquidation according to the following provisions:

- (1) Where the mortgage interest is registered, the liquidation shall be made in the order of the registration of the mortgage interest; if the order of registration is the same, liquidation of the claims shall be made on a pro rata basis;
- (2) The claim secured by a registered mortgage interest shall be satisfied prior to the unregistered ones; and
- (3) Liquidation of unregistered mortgage interests shall be made on a pro rata basis in respect of the claims.

Article 200 After the right to the use of land for construction is mortgaged, the buildings erected thereafter are not mortgaged property. Where the said land use right is used to satisfy the mortgage interest, the newly-erected buildings on the land shall be disposed of together with the land use right; however, the mortgagee shall have no priority in having his claim paid with the proceeds from the said buildings.

Article 201 Where the right to land contractual management is mortgaged, as specified in Subparagraph (3) under the first paragraph of Article 180 of this Law, or the right to the use of land for construction within the area occupied by the workshops and other buildings of a town (township) or village enterprise is mortgaged along with the workshops or other buildings, as specified in Article 183 of this Law, the nature of ownership and the purpose of use of the land may not be altered without going through the statutory procedure after the enforcement of the mortgage interests thereon.

Article 202 The mortgagee shall exercise his mortgage interest within the limitation provided for action of the principal claim; if he fails to do so, the people's court shall not provide protection in this respect .

## Section 2 Maximum Mortgage Interest

Article 203 Where a debtor or a third party provides security for the debts to be incurred consecutively within a given period of time, if the debtor defaults or the conditions for enforcement of the mortgage interest, as agreed upon by the parties concerned, arise, the mortgagee shall have the priority in having his claims paid with the security to the extent of the maximum amount of the claims.

A claim that exists before the creation of the maximum mortgage interest may, with consent of the parties, be included in the claims secured by the maximum amount of mortgage.

Article 204 Where, before the claims secured by the maximum amount of mortgage are established, part of the claims is transferred, the maximum amount of the mortgage interest may not be transferred along, unless otherwise agreed upon by the parties.

Article 205 Before the claims secured by the maximum amount of mortgage are established, the mortgagee and the mortgagor may alter the term, scope and maximum amount of the claims through agreement, provided that such alteration shall not have any adverse effect on the other mortgagees.

Article 206 The claim of the mortgagee is established under one of the following circumstances:

- (1) The agreed term for establishment of the claim expires;
- (2) In the absence of a definitely agreed term for establishing the claim or the term agreed upon is indefinite, the mortgagee or the mortgagor requests establishment of the claim after the lapse of two years calculated from the date of creation of the maximum mortgage interest;
- (3) No new claim is likely to be created;
- (4) The mortgaged property is sealed up or distrained;
- (5) The debtor or the mortgagor is declared bankrupt or is dissolved; or
- (6) Other circumstances provided by law under which a claim is established.

Article 207 The maximum mortgage interest shall be governed by the provisions of Section 1 of this Chapter on general interests acquired through mortgage, apart from the provisions of this Section.

## Chapter XVII Interest Acquired Through Pledge

### Section 1 Interest Acquired Through Pledge of Movables

Article 208 Where to guarantee the repayment of debts, the debtor or a third party pledges his movables to the creditor, if the debtor defaults or the conditions for enforcement of the interest, as agreed upon by the parties concerned, arise, the creditor shall be entitled to the priority in having his claim paid with the pledged movables.

As mentioned in the preceding paragraph, the debtor or the third party is the pledgor, the creditor is the pledgee, and the movables delivered are the pledged property.

Article 209 Movables the transfer of which is prohibited by laws or administrative regulations shall not be pledged.

Article 210 To create the interest of a pledge, the parties concerned shall conclude a pledge contract in written form.

A pledge contract generally includes the following particulars:

- (1) the kind and amount of the claim secured;
- (2) the time limit for the debtor to repay his debts;
- (3) the name, quantity, quality and conditions of the pledged property;
- (4) the scope of the secured interest; and
- (5) the time for delivery of the pledged property.

Article 211 Before the maturity of the debts, the pledgee shall not conclude an agreement with the pledgor that ownership of the pledged property go to the pledgee if the debtor defaults.

Article 212 The interest of a pledge is established upon delivery of the pledged property by the pledgor.

Article 213 The pledgee shall have the right to collect the fruits accrued from the pledged property, unless otherwise stipulated in the contract.

The fruits specified in the preceding paragraph shall first be used to pay off the expenses for collecting the fruits.



Article 214 If, without the consent of the pledgor, the pledgee uses or disposes of the pledged property during the existence of the pledge interest, thus causing losses to the pledgor, he shall be liable for compensation.

Article 215 The pledgee has the duty to safekeep the pledged property. If the pledged property is damaged, destroyed or lost due to improper keeping, the pledgee shall be liable for compensation.

Where the action of the pledgee will likely cause damage, destruction or loss of the pledged property, the pledgor may request the pledgee to deposit the pledged property with a third party, or to offer to clear his debts in advance and return the pledged property.

Article 216 Where due to no fault of the pledgee, the pledged property is likely to be so damaged or destroyed or its value to be depreciated so markedly as to undermine the rights of the pledgee, the pledgee shall have the right to demand that the pledgor provide an appropriate security. If the pledgor refuses to do so, the pledgee may have the pledged property auctioned or sold and may, through agreement with the pledgor, use the proceeds therefrom to repay the debts in advance or deposit the proceeds with a third party.

Article 217 If, during the existence of the interest of a pledge, the pledgee repledges the pledged property to a third party without the consent of the pledgor, thus causing damage, destruction or loss of the property, the pledgee shall be liable for compensation.

Article 218 The pledgee may waive his interest to the pledge. Where the debtor pledges his own property and the pledgee waives his interest to the pledge, the other guarantors may be exempted from suretyship to the extent that the pledgee forfeits his rights and interests in terms of the priority in being paid off, unless the guarantors are still committed to the suretyship.

Article 219 Where the debtor repays the debts or the pledgor pays off in advance the debts he guaranteed, the pledgee shall return the pledged property.

If the debtor defaults or the conditions for enforcement of the interest, as agreed upon by the parties concerned, arise, the pledgee may conclude an agreement with the pledgor that the pledged property be converted into money, or he may enjoy the priority in having his claim paid with the proceeds obtained from auction or sale of the pledged property.

The pledged property shall be converted into money or be sold off by referring to its market price.

Article 220 The pledgor may request the pledgee to enforce his interest to the pledge in a timely manner at the maturity of the debts. Where the pledgee fails to do so, the pledgor may request the people's court to have the pledged property auctioned or sold.

Where the pledgor requests the pledgee to enforce his interest to the pledge in a timely manner, the pledgee slacks in doing so, thus causing losses, he shall be liable for compensation.

Article 221 If, after the pledged property is converted into money or auctioned or sold, the proceeds therefrom exceed the amount of the claim, the balance shall go to the pledgor, and if they are insufficient to cover the debts, the difference shall be paid by the debtor.

Article 222 The pledgor and the pledgee may create the maximum pledge interest by agreement.

Apart from the relevant provisions of this Section, the provisions in Section 2 of Chapter 16 of this Law on maximum mortgage interest shall be applicable *mutantis mutandis*.

## Section 2 Interests Acquired Through Pledge of Rights

Article 223 The following rights that a debtor or a third party is entitled to dispose of may be pledged:

- (1) bills of exchange, cheques, promissory notes;
- (2) bonds, certificates of deposit;
- (3) warehouse receipts, bills of lading;
- (4) portions of funds or certificates of stocks which are transferable;
- (5) proprietary rights consisted in the intellectual property rights, such as the right to exclusive use of registered trademarks, the patents and copyrights, which are transferable;
- (6) accounts receivable; and
- (7) other property rights which may be pledged as provided for by laws and administrative regulations.

Article 224 Where a bill of exchange, cheque, promissory note, bond, certificate of deposit, warehouse receipt or bill of lading is pledged, the parties concerned shall conclude a contract in written form. The interest to the pledge is created at the time when the certificate of right is delivered to the pledgee; if there is no such certificate, the interest is created at the time when the pledge is registered with the relevant authority.

Article 225 Where the date of payment or of delivery of goods in respect of a pledged bill of exchange, cheque, promissory note, bond, certificate of deposit, warehouse receipt or bill of lading is matured prior to the date of maturity of the principal claim, the pledgee may accept the payment or the goods delivered and may conclude an agreement with the pledgor that the payment or the goods accepted be used to pay the debts in advance or be deposited with a third party.

Article 226 Where portions of funds or shares are pledged, the parties concerned shall conclude a contract in written form. Where portions of funds or the shares that are registered with the securities registration and settlement authority are pledged, the interest to the pledge is established at the time when the pledge is registered with the securities registration and settlement authority. Where other kinds of shares are pledged, the interest to the pledge is established at the time when the pledge is registered with the administration department for industry and commerce.

The portions of funds or the shares that are pledged may not be transferred, unless otherwise agreed upon by the pledgor and the pledgee. The proceeds the pledgor obtained from the transfer of the portions of funds or shares shall be used in advance to pay the debts owed to the pledgee or be deposited with a third party.

Article 227 Where the proprietary rights consisted in the intellectual property rights, such as the right to exclusive use of registered trademarks, the patents and copyrights, are pledged, the parties concerned shall conclude a contract in written form. The interest to the pledge is perfected at the time when the pledge is registered with the relevant authority.

If the proprietary rights consisted in the intellectual property rights are pledged, the pledgor may not transfer or permit another person to use such rights, unless otherwise agreed upon by the pledgor and the pledgee through consultation. The proceeds obtained by the pledgor through transfer of such rights or through permitting another person to use such rights shall be used in advance to pay the debts owed to the pledgee or be deposited with a third party.

Article 228 Where the accounts receivable are pledged, the parties concerned shall conclude a contract in written form. The interest to the pledge is created at the time when the pledge is registered with the credit information service.

The pledged accounts receivable may not be transferred, unless otherwise agreed upon by the pledgor and the pledgee through consultation. The proceeds obtained by the pledgor from the transfer of the accounts receivable shall be used in advance to pay the debts owed to the pledgee or be deposited with a third party.

Article 229 The interests acquired through pledge of rights are governed, apart from by the provisions of this Section, by those under Section 1 of this Chapter on interests acquired through pledge.

## Chapter XVIII Lien

Article 230 If a debtor defaults, the creditor may retain the debtor's movables which have been legally possessed by the creditor and shall have the priority in being paid with the said property.

The creditor mentioned in the preceding paragraph is the lien holder, and the movables in his possession are the retained property.

Article 231 The movables retained by the creditor fall in the same nexus of legal relationships with the creditor's claims, except in the case of a lien between enterprises.

Article 232 The movables may not be retained as are so stipulated by law or by agreement between the parties concerned.

Article 233 Where the retained property is dividable, the value of the retained property shall be equivalent to the amount of the debts owed.

Article 234 The lien holder shall have the duty to safekeep the retained property. If the retained property is damaged, destroyed or lost due to improper keeping, the lien holder shall be liable for compensation.

Article 235 The lien holder shall have the right to collect the fruits accrued from the retained property.

The fruits mentioned in the preceding paragraph shall first be used to pay the expenses for collecting the fruits.

Article 236 The lien holder and the debtor shall reach an agreement on the time limit for the debtor to pay the debts after the property is retained. If there is no such agreement or if the agreement is indefinite, the lien holder shall allow a time limit of two months or longer for the debtor to pay the debts, except where the movables are fresh, living or perishable things. If the debtor defaults at the expiration of the specified time limit, the lien holder may upon agreement with the debtor have the retained property converted into money, or may enjoy the priority in having the debts paid with the proceeds from auction or sale of the property.

The retained property shall be converted into money or be sold off by referring to its market price.

Article 237 The debtor may request the lien holder to enforce the right of lien after the expiration of the time limit for payment of the debts. Where the lien holder fails to enforce the right, the debtor may request the people's court to have the retained property auctioned or sold.

Article 238 If after the retained property is converted into money, auctioned or sold, the proceeds therefrom exceed the amount of the claim, the balance shall go to the debtor, and if they are insufficient to cover the debts, the difference shall be paid by the debtor.

Article 239 Where a lien is created on the same piece of the movables that has been mortgaged or pledged, the lien holder shall enjoy the priority in having his debts paid.

Article 240 Where the lien holder forfeits his possession of the retained property or accepts other security provided by the debtor, the right of lien shall extinguish.

## Part Five Possession

### Chapter XIX Possession

Article 241 In the event of possession arising from contractual relationship, the use of the immovables or movables in question, the benefits therefrom and breach of duty shall be subject to the terms of the contract. If there are no such terms in the contract or such terms are indefinite, they shall be governed by the provisions of relevant laws.

Article 242 Where a possessor causes damage to the immovables or movables in the use of it, the possessor, if he is a mala fidei one, shall be liable for compensation.

Article 243 Where the immovables or movables come to be possessed by another person, the obligee may request the person to return them and the fruits therefrom; however, the obligee shall

compensate the possessor, if he is a bona fide one, for his expenses necessitated for maintaining the property.

Article 244 Where the immovables or movables in the possession of another person is damaged, or destroyed or lost and the obligee requests compensation, the possessor shall return the insurance monies, compensation payment, indemnities, etc. to the obligee. If the losses of the obligee are not fully covered thereby, the possessor, if he is a mala fidei one, shall, in addition, compensate for the uncovered part.

Article 245 Where the immovables or movables in a person's possession are encroached upon, the person shall have the right to request the return of the original property. In the event of trespass to the possession of another, the possessor shall have the right to request elimination of such trespass or hazard. If damage is caused by encroachment or the trespass, the possessor shall have the right to request compensation.

The right of claim to the return of the original property shall extinguish, if the possessor fails to exercise it within one year from the date of the encroachment.

#### Supplementary Provisions

Article 246 Before the scope, authority and measures for unified registration of immovable property are stipulated by laws or administrative regulations, they may be stipulated by local regulations according to the relevant provisions of this Law.

Article 247 This Law shall go into effect as of October 1, 2007

## **Trademark Law of the People's Republic of China**

Adopted at the 24th Meeting of the Standing Committee of the Fifth National People's Congress on August 23, 1982 and promulgated by Order No.10 of the Standing Committee of the National People's Congress on August 23, 1982; amended for the first time in accordance with the Decision on Revising the Trademark Law of the People's Republic of China adopted at the 30th Meeting of the Standing Committee of the Seventh National People's Congress on February 22, 1993; and amended for the second time in accordance with the Decision on Revising the Trademark Law of the People's Republic of China adopted at the 24th Meeting of the Standing Committee of the Ninth National People's Congress on October 27, 2001

### Contents

Chapter I General Provisions

Chapter II Application for Trademark Registration

Chapter III Examination and Approval of Trademark Registration

Chapter IV Renewal, Assignment and Licensing of Registered Trademarks

Chapter V Determination of Disputes Concerning Registered Trademarks

Chapter VI Administrative Control of the Use of Trademarks

Chapter VII Protection of the Exclusive Right to the Use of a Registered Trademark

Chapter VIII Supplementary Provisions

### Chapter I General Provisions

Article 1 This Law is enacted for the purpose of improving the administration of trademarks, protecting the exclusive right to the use of a trademark, and encouraging producers and dealers to guarantee the quality of their goods and services and preserve the credibility of trademarks, so as to protect the interests of consumers, producers and dealers and promote the development of the socialist market economy.

Article 2 The Trademark Office of the administrative department for industry and commerce under the State Council shall be in charge of the work of trademark registration and administration throughout the country.

The administrative department for industry and commerce under the State Council shall establish a Trademark Review and Adjudication Board to be responsible for handling trademark disputes.

Article 3 Registered trademarks refer to trademarks that are registered with the approval of the Trademark Office, including trademarks for goods and services, collective trademarks and certification trademarks. The owner of a registered trademark shall enjoy the exclusive right to the use of the trademark, which shall be protected by law.

For purposes of this Law, a collective trademark refers to one that is registered in the name of a group, association, or any other organization for use in business by its members to indicate membership.

For purposes of this Law, a certification trademark refers to one that is controlled by an organization which is capable of exercising supervision over a particular kind of goods or services and that is used by a unit other than the organization or by an individual for its or his goods or services, and is designed to certify the indications of the place of origin, raw materials, mode of manufacture, quality, or other specified properties of the said goods or services.

Particulars pertaining to the registration and administration of collective trademarks and certification trademarks shall be formulated by the administrative department for industry and commerce under the State Council.

Article 4 Any natural person, legal person, or other organization that needs to acquire the exclusive right to the use of a trademark for the goods or he produces, manufactures, processes, selects, or markets shall file an application for registration of the trademark of the goods with the Trademark Office.

Any natural person, legal person, or other organization that needs to acquire the exclusive right to the use of a service trademark for the services it or he provides shall file an application for registration of the service trademark with the Trademark Office.

Provisions regarding the goods trademarks in this Law shall be applicable to service trademarks.

Article 5 Two or more natural persons, legal persons, or other organizations may jointly file an application with the Trademark Office for the registration of one and the same trademark and jointly enjoy and exercise the exclusive right to the use of the trademark.

Article 6 With respect to goods on which the State requires the use of a registered trademark, an application for trademark registration shall be filed; the goods may not be sold on the market before registration is granted.

Article 7 The user of a trademark shall be responsible for the quality of the goods on which the trademark is used. The administrative departments for industry and commerce at all levels shall, through the administration of trademarks, put an end to any practice that deceives consumers.

Article 8 Any visible sign that can serve to distinguish the goods of a natural person, legal person, or other organization from those of another, including any work, design, letter of the alphabet, numeral, three-dimensional symbol and color combination, or any combination of the above, may be made a trademark for application for registration.

Article 9 A trademark submitted for registration shall bear noticeable characteristics and be readily distinguishable, and it may not conflict with the legitimate rights obtained by others earlier.

A trademark registrant shall have the right to indicate the wording "Registered Trademark" or the sign showing that the trademark is registered.

Article 10 None of the following signs may be used as trademarks:

- (1) those identical with or similar to the State name, national flag, national emblem, military flag, or decorations, of the People's Republic of China; those identical with the names of the specific locations that are seats of central state organs; or those identical with the names or designs of landmark buildings;
- (2) those identical with or similar to the state names, national flags, national emblems or military flags of foreign countries, with the exception of those the use of which is permitted by the government of the country concerned;
- (3) those identical with or similar to the names, flags or emblems of international inter-governmental organizations, with the exception of those the use of which is permitted by the organization concerned or is not liable to mislead the public;
- (4) those identical with or similar to an official mark or inspection stamp that indicates control and guarantee, except where authorized;
- (5) those identical with or similar to the symbol or name of the Red Cross or the Red Crescent;
- (6) those having the nature of discrimination against any nationality;
- (7) those constituting exaggerated and deceitful advertising; and
- (8) those detrimental to socialist ethics or customs, or having other unwholesome influences.

No geographical names of administrative divisions at or above the county level or foreign geographical names known to the public may be used as trademarks, except where geographical names have other meanings or constitute part of a collective trademark or certification trademark. Registered trademarks in which geographical names are used shall remain valid.

Article 11 None of the following marks may be registered as trademarks:

- (1) where the mark bears only the generic name, design, or model number of the goods concerned;
- (2) where it just directly indicates the quality, principal raw materials, function, use, weight, quantity or other features of the goods; and
- (3) where distinctive characteristics are lacking.

Any mark mentioned in the preceding paragraph may be registered as a trademark if it has acquired distinctive features through use and is readily distinguishable.



Article 12 No application for registration of a three-dimensional sign as a trademark may be granted, where the sign merely indicates the shape inherent in the nature of the goods concerned, or it is only dictated by the need to achieve technical effects or the need to give the goods substantive value.

Article 13 Where the trademark of an identical or similar kind of goods is a reproduction, imitation, or translation of another person's well-known trademark not registered in China and is liable to cause public confusion, no application for its registration may be granted and its use shall be prohibited.

Where the trademark of a different or dissimilar kind of goods is a reproduction, imitation, or translation of another person's well-known trademark not registered in China and it misleads the public so that the interests of the owner of the registered well-known trademark are likely to be impaired, no application for its registration may be granted and its use shall be prohibited.

Article 14 The following factors shall be considered in determining whether or not a trademark is a well-known one:

- (1) the degree of public recognition in its trading areas;
- (2) the duration in which it has been in use;
- (3) the duration and extent of its advertising, and the geographical areas the advertising has covered;
- (4) the records of protection it has gained as well-known trademark; and
- (5) other factors serving to make it well known.

Article 15 Where an agent or representative, without authorization of the client, seeks to register in its own name the client's trademark and the client objects, the trademark shall not be registered and its use shall be prohibited.

Article 16 Where a trademark bears a geographical indication of the goods when the place indicated is not the origin of the goods in question, thus misleading the public, the trademark shall not be registered and its use shall be prohibited. However, where the registration is obtained in goodwill, it shall remain valid.

The geographical indication mentioned in the preceding paragraph means the origin of the goods the special qualities, credibility or other characteristics of the goods and it is primarily determined by the natural factors or other humanistic factors of the place indicated.

Article 17 Where a foreigner or foreign enterprise applies for trademark registration in China, the matter shall be handled in accordance with any agreement concluded between the country to which the applicant belongs and the People's Republic of China, or any international treaty to which both countries are parties, or on the basis of the principle of reciprocity.

Article 18 Where a foreigner or foreign enterprise intends to apply for the registration of a trademark or handle other trademark matters in China shall entrust an organization that is approved by the State and is qualified for serving as a trademark agent.

## Chapter II Application for Trademark Registration

Article 19 An applicant for trademark registration shall fill in the specified form of classification of goods as to the class and trade name designation of the goods on which the trademark is to be used.

Article 20 If an applicant intends to use the same trademark on goods in different classes, he shall submit an application for each class on the basis of the specified form of classification of goods.

Article 21 If a registered trademark needs to be used on other goods of the same class, a separate application for registration shall be filed.

Article 22 If a change needs to be made in the signs of a registered trademark, an application shall be filed anew.

Article 23 If a change needs to be made in the name or address of the owner of a registered trademark or in any other registered matter, an application for the change shall be filed.

Article 24 Where an applicant, within six months from the date he applies for registration of his trademark for the first time in a foreign country, again applies in China for registration of one and the same trademark for the same goods, he may, in accordance with any agreement concluded between the foreign country concerned and the People's Republic of China or any international treaty to which both countries are parties, or on the basis of the priority principle mutually accepted, enjoy priority.

Where, in accordance with the preceding paragraph, an applicant claims priority, he shall so state in writing at the time when he files the application for trademark registration and shall, within three months, submit a copy of the original application he files for the first time. Failure on the part of the applicant to make the statement in writing or to submit a copy of the original application before the expiration of the time limit shall be regarded as not claiming priority.

Article 25 The applicant for registration of a trademark that is used for the first time on goods displayed at an international exhibition organized or recognized by the Chinese Government may, within six months from the date the said goods are placed on exhibition, enjoy priority.

Where, in accordance with the preceding paragraph, an applicant claims priority, he shall so state in writing at the time when he files the application for trademark registration and shall, within three months, submit the name of the exhibition, evidence supporting the use of the trademark on the goods displayed, documents proving the date the exhibition, etc. failure to make the statement in writing or to submit the documents before the expiration of the time limit shall be regarded as not claiming priority.

Article 26 Matters stated in the application for trademark registration and all information provided shall be truthful, accurate and complete.

### Chapter III Examination and Approval of Trademark Registration

Article 27 Any trademark, for the registration of which an application is made, conforms to the relevant provisions of this Law shall undergo preliminary examination and approval by the Trademark Office, which shall announce it.

Article 28 Where a trademark, for the registration of which an application is made, that does not conform to the relevant provisions of this Law or that is identical with or similar to the trademark already registered by another person or is given preliminary examination and approval for use on the same kind of goods or similar goods, the Trademark Office shall reject the application and shall not announce that trademark.

Article 29 Where two or more applicants apply to register identical or similar trademarks for use on the same kind of goods or similar goods, the Trademark Office shall first conduct examination of, give approval to and announce the trademark whose registration is applied for earlier than the rest. Where the applications are filed on the same day, the Trademark Office shall first examine, give approval to and announce the trademark which is used earlier than the rest, and it shall reject the applications for registration of the other trademarks and shall not announce them.

Article 30 Any person may, within three months from the date a trademark is announced, raised an objection to the trademark that has undergone preliminary examination and obtained approval. Where no objection is raised at the expiration of the time limit, the trademark shall be registered upon approval, a trademark registration certificate shall be issued, and the matter shall be announced.

Article 31 No applicant for trademark application may infringe upon another person's existing prior rights, nor may he, by illegitimate means, rush to register a trademark that is already in use by another person and has certain influence.

Article 32 Where an application for trademark registration is rejected and the trademark is not announced, the Trademark Office shall notify the applicant of the matter in writing. Where the applicant is dissatisfied, he may, within fifteen days from date the notification is received, apply to the Trademark Review and Adjudication Board for review, and the Board shall make a decision and notify the applicant of its decision in writing.

Where the applicant is dissatisfied with the decision of the Trademark Review and Adjudication Board, he may, within 30 days from the date the notification is received, bring a suit in a People's Court.

Article 33 Where an objection is raised against a trademark that has undergone preliminary examination has been given approval and announced, the Trademark Office shall hear the facts

and reasons stated by the objector and the objected and shall make a decision after investigation and verification. Where a party is dissatisfied with the decision, it may, within 15 days from the date the notification is received, apply to the Trademark Review and Adjudication Board for a review. The Board shall give a ruling and notify both the objector and the objected in writing.

Where a party is dissatisfied with the ruling of the Trademark Review and Adjudication Board, it may, within 30 days from the date the notification is received, bring a suit in a People's Court. The People's Court shall notify the other party involved in the trademark review proceedings to participate in the proceedings as the third party.

Article 34 Where a party does not apply to the Trademark Office for a review of the Office's decision or bring a suit in a People's Court against the ruling of the Trademark Review and Adjudication Board within the statutory limit, the decision and ruling shall go into effect.

Where it is determined that the objection is not justified, the trademark shall be registered upon approval, a trademark registration certificate shall be issued, and the trademark shall be announced. Where it is determined that the objection is justified, no approval shall be granted for registration of the trademark.

Where it is determined that the objection is not justified and approval is granted to registration of the trademark, the date on which the applicant for trademark registration obtains its exclusive right to the use of the trademark shall be counted from the day on which the three months following the preliminary examination and announcement of the trademark expire.

Article 35 Applications for trademark registration and for review shall be examined without delay.

Article 36 Where an applicant for trademark registration or a registrant discovers an obvious error in the trademark application or registration documents, he may apply for its correction. The Trademark Office shall, in accordance with law and within the limits of its functions and powers, make the correction and shall notify the party of the matter.

The correction of errors mentioned in the preceding paragraph shall not involve substantive matters in the application or registration documents.

#### Chapter IV Renewal, Assignment and Licensing of Registered Trademarks

Article 37 The period of validity of a registered trademark shall be 10 years, counted from the day the registration is approved.

Article 38 If an owner needs to continue to use his registered trademark after the period of validity expires, an application for renewal of registration shall be made within six months before the expiration. If the owner fails to do so within that period of time, an extension period of six months may be granted. If no application is filed before the extension period expires, the registered trademark shall be cancelled.

The period of validity for each renewal of registration shall be 10 years.

After renewal of registration is approved, it shall be announced.

Article 39 To assign a registered trademark, the assignor and assignee shall sign an assignment agreement and jointly file an application with the Trademark Office. The assignee shall guarantee the quality of the goods on which the registered trademark is used.

After the assignment of a registered trademark is approved, it shall be announced. The assignee shall enjoy the exclusive right to the use of the trademark starting from the date the announcement is made.

Article 40 The owner of a registered trademark may, by concluding a trademark licensing contract, authorize another person to use his registered trademark. The licensor shall supervise the quality of the goods on which the licensee uses his registered trademark, and the licensee shall guarantee the quality of the goods on which the registered trademark is to be used.

If any person is authorized to use the registered trademark of another person, the name of the licensee and the origin of the goods shall be indicated on the goods that bear the registered trademark.

The trademark licensing contract shall be submitted to the Trademark Office for the record.

## Chapter V Determination of Disputes Concerning Registered Trademarks

Article 41 Where a trademark is registered in violation of the provisions of Article 10, 11, or 12 of this Law, or it is registered by deceitful or other illegitimate means, the Trademark Office shall cancel the trademark. Any unit or individual may request that the Trademark Review and Adjudication Board make a ruling to cancel such a registered trademark.

Where a trademark is registered in violation of the provisions of Article 13, 15, 16, or 31 of this Law, the owner of the trademark or any interested party may, within five years from the date the trademark is registered, request that the Trademark Review and Adjudication Board make a ruling to cancel the trademark. Where the trademark is registered with ill will, the owner of the well-known trademark shall not be limited by the five-year period.

In addition to circumstances specified in the preceding two paragraphs, any person who intends to take issue on a registered trademark may, within five years from the date the trademark is registered upon approval, apply to the Trademark Review and Adjudication Board for a ruling.

After receiving the application for a ruling, the Trademark Review and Adjudication Board shall notify the parties concerned and ask them to put forward their arguments within a specified time limit.

Article 42 With regard to a trademark against which objections are raised and on which a ruling is made prior to its registration with approval, the same facts and reasons may not be used in another application for a ruling.

Article 43 After the Trademark Review and Adjudication Board has made a ruling either to maintain or to revoke a registered trademark, it shall notify the party concerned of the ruling in writing.

Where the party is dissatisfied with the ruling of the Trademark Review and Adjudication Board, he may, within 30 days from the date the notification is received, bring a suit in a People's Court. The People's Court shall notify the other party involved in the trademark adjudication proceedings to take part in the legal proceedings as the third party.

## Chapter VI Administrative Control of the Use of Trademarks

Article 44 Where a trademark user commits any of the following acts, the Trademark Office shall order it to rectify the situation within a time limit or revoke the registered trademark:

- (1) altering the registered trademark by himself;
- (2) altering the name, address, or other particulars in the registration by himself;
- (3) assigning the trademark by himself; or
- (4) ceasing the use of the registered trademark for three consecutive years.

Article 45 If registered trademarks are used on coarsely manufactured goods that are passed off as quality goods, thus deceiving consumers, the administrative departments for industry and commerce at various levels shall, on the merits of each case, order rectification of the situation within a time limit and may, in addition, circulate a notice on the matter or impose a fine, or the Trademark Office may revoke the registered trademarks.

Article 46 If a registered trademark is revoked or is not renewed at the expiration of its period of validity, the Trademark Office shall not approve any application for the registration of a trademark identical with or similar to the said trademark within one year from the date it is revoked or cancelled.

Article 47 In the event of a violation of the provisions of Article 5 of this Law, the local administrative department for industry and commerce shall order the violator to file an application for registration within a time limit and may, in addition, impose a fine.

Article 48 Where a person commits any of the following acts by using an unregistered trademark, the local administrative department for industry and commerce shall stop him from using the trademark, order him to make rectification within a time limit and may, in addition, circulate a notice on the matter or impose a fine:

- (1) passing off the trademark as a registered one;
- (2) violating the provisions of Article 8 of this Law; or
- (3) using the trademark on coarsely manufactured goods that are passed off as quality goods, thus deceiving consumers.

Article 49 Where a party is dissatisfied with the decision made by the Trademark Office to revoke his registered trademark, he may, within 15 days from the date the notification is received, apply to the Trademark Review and Adjudication Board for a review. The Trademark Review and Adjudication Board shall make a decision and notify the applicant in writing.

Where the party is dissatisfied with the decision of the Trademark Review and Adjudication Board, it may, within 30 days from the date the notification is received, bring a suit in a People's Court.

Article 50 Where the party is dissatisfied with the decision made by the administrative department for industry and commerce to impose a fine under Article 45, 47, or 48 of this Law, he may, within 15 days from the date the notification is received, bring a suit in a People's Court. If the party neither brings a suit at the expiration of the time limit nor complies with the decision, the administrative department for industry and commerce concerned shall request the People's Court to enforce the decision.

## Chapter VII Protection of the Exclusive Right to the Use of a Registered Trademark

Article 51 The exclusive right to the use of a registered trademark shall be limited to trademarks which are registered upon approval and to goods the use of a trademark on which is approved.

Article 52 Any of the following acts shall constitute an infringement on the exclusive rights to the use of a registered trademark:

- (1) using a trademark that is identical with or similar to the registered trademark on the same or similar goods without permission of the owner of the registered trademark;
- (2) selling goods that infringe on the exclusive right to the use of a registered trademark;
- (3) counterfeiting, or making without authorization, representations of another person's registered trademark, or selling such representations;
- (4) altering a registered trademark without permission of its owner and selling goods bearing such an altered trademark on the market; and
- (5) impairing in other manners another person's exclusive right to the use of its registered trademark.

Article 53 When a dispute arises as a result of any of the acts infringing upon another person's exclusive right to the use of a registered trademark as mentioned in Article 52 of this Law, the

parties involved shall settle the dispute through consultation. Where the parties are not willing to do so or where consultation fails, the owner of the registered trademark or any interested party may bring a suit in a People's Court or request the administrative department for industry and commerce to handle the matter. When the said department determines that the fact of infringement is established, it shall order the infringer to cease infringing upon that right immediately, and it shall confiscate and destroy the goods involved and the tools specially used to manufacture the said goods and counterfeit the representations of the registered trademark, and may also impose a fine. Where the party is dissatisfied with the decision of the department, he may, within 15 days from the date the notification is received, bring a suit in a People's Court in accordance with the Administrative Procedure Law of the People's Republic of China. Where the infringer neither brings a suit at the expiration of the time limit nor complies with the decision, the administrative department for industry and commerce may request the People's Court to enforce its decision. The administrative department for industry and commerce that handles the dispute may, as requested by the party, mediate as a settlement on the amount of compensation for the infringement of the exclusive right to the use of the trademark. Where mediation fails, the party may, in accordance with the Civil Procedure Law of the People's Republic of China, bring a suit in a People's Court.

Article 54 The administrative department for industry and commerce shall have the power to investigate any act infringing upon the exclusive right to the use of a registered trademark. Where a crime is suspected to have been committed, it shall promptly transfer the case to a judicial department for handling in accordance with law.

Article 55 When an administrative department for industry and commerce at or above the county level, on the basis of the evidence or information, obtained for a suspected violation of law, conducts investigation into a suspected infringement of another person's exclusive right to the use of a registered trademark, it may exercise the following functions and powers:

- (1) questioning the parties concerned to find out the facts regarding the infringement of another person's exclusive right to the use of a registered trademark;
- (2) checking and reproducing the parties' contracts, invoices, account books, and other materials relating to the infringement;
- (3) conducting on-the-spot inspection of the premises where the suspected party carries out activities infringing upon another person's exclusive right to the use of a registered trademark; and
- (4) inspecting articles involved in the infringement; sealing or seizing the articles that are proven to been used for infringing upon another person's exclusive right to the use of a registered trademark.

When the administrative department for industry and commerce exercises the functions and powers provided for in the preceding paragraph in accordance with law, the parties shall assist and cooperate with it and may not refuse to do so or stand in its way.

Article 56 The amount of compensation for infringement of the exclusive right to the use of a trademark shall be the amount of the profits that the infringer has earned as a result of the infringement during the period of the infringement, or the amount of the losses that the infringed



has suffered as a result of the infringement during the period of the infringement, including any reasonable expenses the infringed has paid in its effort to put an end to the infringement.

Where the profits earned by the infringer or the losses suffered by the infringed as a result of the infringement, as mentioned in the preceding paragraph, are hard to determine, the People's Court shall, on the basis of the circumstances of the infringement, decide to make it not more than RMB 500,000 yuan.

Where a person unknowingly sells goods which represent an infringement upon another person's exclusive right to the use of a registered trademark but can prove that they are obtained by himself lawfully and can identify the supplier, he shall not bear the liability to pay compensation.

Article 57 Where the owner of a registered trademark or any interested party has evidence proving that another party is committing or will soon commit an act that infringes upon his exclusive right to the use of its registered trademark and that, unless it is stopped promptly, will cause irreparable harm to his legitimate rights and interests, he may, before filing a lawsuit, apply to the People's Court for ordering the cease of the act and for adopting measures to preserve his property.

In handling the application mentioned in the preceding paragraph, the People's Court shall apply the provisions in Articles 93 through 96 and in Article 99 of the Civil Procedure Law of the People's Republic of China.

Article 58 In order to put a stop to an infringement, the owner of a registered trademark or the interested party may, under conditions where evidence may be missing or become unobtainable in future and prior to filing a lawsuit, apply to the People's Court for preserving the evidence.

The People's Court shall make a ruling within 48 hours from the time it accepts the application. Once a ruling to have the evidence preserved is made, it shall be enforced immediately.

The People's Court may order the applicant to provide a surety. Where no surety is provided, the People's Court may reject the application.

Where the applicant fails to bring a lawsuit within 15 days after the People's Court adopts the preservation measure, the People's Court shall rescind the measure.

Article 59 Where a person, without permission of the owner of a registered trademark, uses a trademark that is identical with the owner's on the same kind of goods, which constitutes a crime, he shall, in addition to compensating losses suffered by the infringed, be investigated for criminal responsibility in accordance with law.

Anyone who counterfeits or makes without permission the representations of another person's registered trademark or sells such representations which constitutes a crime, shall, in addition to compensating the losses suffered by the infringed, be investigated for criminal responsibility in accordance with law.

Anyone who knowingly sells goods bearing counterfeit registered trademarks, which constitutes a crime, shall, in addition to compensating the losses suffered by the infringed, be investigated for criminal responsibility in accordance with law.

Article 60 Functionaries of State organs engaged in trademark registration, administration, and review shall be impartial in implementing the law, honest and self-disciplined, and devoted to their duties, and shall provide services with civility.

No functionaries of State organs working in the Trademark Office and the Trademark Review and Adjudication Board or engaged in trademark registration, administration, and review may work for trademark agencies or engage in the manufacture or marketing of goods.

Article 61 Administrative departments or industry and commerce shall establish and improve an internal supervision system to supervise and inspect the way State organ functionaries in charge of trademark registration, administration, and review implement laws and administrative regulations and observe discipline.

Article 62 Where a State organ functionary working in trademark registration, administration, and review neglects his duty, abuses his power, and engages in malpractice for personal gain, violates the law in trademark registration, administration, and review, accepts money or things of value from a party, or seeks illegitimate interests, and where the case is so serious as to constitute a crime, he shall be investigated for criminal responsibility in accordance with law. Where the case does not constitute a crime, he shall be given administrative sanction in accordance with law.

## Chapter VIII Supplementary Provisions

Article 63 Applicants for trademark registration and persons having other trademark matters handled shall pay a fee, the specific rates of which shall be determined separately.

Article 64 This Law shall go into effect as of March 1, 1983. The Regulations on Trademark Administration promulgated by the State Council on April 10, 1963 shall be annulled simultaneously, and any other provisions concerning trademark administration that conflict with the provisions of this Law shall be nullified at the same time.

Trademarks registered before this Law goes into effect shall remain valid.

## **Patent Law of the People's Republic of China**

Adopted at the 4th Meeting of the Standing Committee of the Sixth National People's Congress on March 12, 1984 and promulgated by Order No. 11 of the President of the People's Republic of China on March 12, 1984; amended for the first time in accordance with the Decision of the Standing Committee of the Seventh National People's Congress on Amending the Patent Law of the People's Republic of China at its 27th Meeting on September 4, 1992 and amended again in accordance with the Decision of the Standing Committee of the Ninth National People's Congress on Amending the Patent Law of the People's Republic of China adopted at its 17th Meeting on August 25, 2000

### Contents

#### Chapter I General Provisions

#### Chapter II Conditions for the Grant of Patent Rights

#### Chapter III Application for Patents

#### Chapter IV Examination and Approval of Patent Applications

#### Chapter V Term, Termination and Invalidation of Patent Rights

#### Chapter VI Compulsory Licence for Exploitation of a Patent

#### Chapter VII Protection of Patent Rights

#### Chapter VIII Supplementary Provisions

#### Chapter I General Provisions

Article 1 This Law is enacted in order to protect patent rights for inventions-creations, encourage invention-creation, to facilitate the wide application of inventions-creations, promote the progress and innovation of science and technology, and meet the needs of the socialist modernization drive.

Article 2 For the purpose of this Law, "invention-creation" means inventions, utility models and designs.

Article 3 The patent administration department under the State Council is responsible for the patent work throughout the country. It accepts and examines patent applications and grants patent rights for inventions-creations in accordance with law.

The administrative authority for patent affairs under the people's governments of provinces, autonomous regions and municipalities directly under the Central Government are responsible for the administrative work concerning patents in their respective administrative areas.

Article 4 If an invention-creation for which a patent is applied involves national security or other vital interests of the State that require secrecy, the matter shall be treated in accordance with the relevant provisions of the State.

Article 5 No patent right shall be granted for any invention-creation that violates the laws of the State, goes against social morals or is detrimental to the public interest.

Article 6 An invention-creation, made by a person in execution of the tasks of the entity to which he belongs, or made by him mainly by using the material and technical means of the entity is a service invention-creation. For a service invention-creation, the right to apply for a patent belongs to the entity. After the application is approved, the entity shall be the patentee.

For a non-service invention-creation, the right to apply for a patent belongs to the inventor or creator. After the application is approved, the inventor or creator shall be the patentee.

In respect of an invention-creation made by a person using the material and technical means of an entity to which he belongs, where the entity and the inventor or creator have entered into a contract in which the right to apply for and own a patent is provided for, such a provision shall apply.

Article 7 No entity or individual may suppress the application of an inventor or designer for a patent in respect of an invention-creation that is not job-related.

Article 8 For an invention-creation jointly made by two or more entities or individuals, or made by an entity or individual in execution of a commission given to it or him by another entity or individual, the right to apply for a patent belongs, unless otherwise agreed upon, to the entity or individual that made, or to the entities or individuals that jointly made, the invention-creation. After the application is approved, the entity or individual that applies for it shall be the patentee.

Article 9 If two or more applicants apply separately for a patent on the same invention-creation, the patent right shall be granted to the person who applied first.

Article 10 The right of patent application and the patent right itself may be assigned.

If a Chinese entity or individual wishes to assign a right of patent application or a patent right to a foreigner, it or he must obtain the approval of the relevant competent department under the State Council.

Where the right to apply for a patent or the patent right is assigned, the parties shall conclude a written contract and register it with the patent administration department under the State Council. The patent administration department under the State Council shall announce the registration. The assignment shall take effect as of the date of registration.

Article 11 After the grant of the patent right for an invention or utility model, except where otherwise provided for in this Law, no entity or individual may, without the authorization of the

patentee, exploit the patent, that is, make, use, offer to sell, sell or import the patented product, or use the patented process, or use, offer to sell, sell or import the product directly obtained by the patented process, for production or business purposes.

After the grant of the patent right for a design, no entity or individual may, without the authorization of the patentee, exploit the design, that is, make, sell or import the product incorporating its or his patented design, for production or business purposes.

Article 12 Except as provided for in Article 14 of this Law, any entity or individual exploiting the patent of another must conclude a written licensing contract with the patentee and pay the patentee a fee for the exploitation of its or his patent. The licensee shall not have the right to authorize any entity or individual other than that referred to in the contract to exploit the patent.

Article 13 After the application for an invention patent has been publicly announced, the applicant may require the entities or individuals exploiting the invention to pay an appropriate fee.

Article 14 Where any patent for invention, which belongs to any State-owned enterprise or institution, is of great significance to the interests of the State or the public, the competent departments concerned under the State Council and the people's governments of provinces, autonomous regions or municipalities directly under the Central Government may, after approval by the State Council, decide that the patented invention be widely applied within the approved limits, and allow designated entities to exploit that invention. The exploiting entity shall, according to the regulations of the State, pay a fee for exploitation to the patentee .

Any patent for invention belonging to a Chinese individual or an entity under collective ownership, which is of great significance to the interests of the State or the public and needs to be widely applied, may be treated alike by making reference to the provisions of the preceding paragraph.

Article 15 The patentee shall have the right to affix a patent marking and indicate the patent number on the patented product or on the packaging of that product.

Article 16 The entity that is granted a patent right shall reward to the inventor or creator of a service invention--creation and, upon exploitation of the patented invention-creation, shall give the inventor or creator a reasonable remuneration based on the extent the invention-creation is applied and the economic benefits it yields.

Article 17 An inventor or designer shall have the right to name himself as such in the patent document.

Article 18 If a foreigner, foreign enterprise or other foreign organization having no regular residence or place of business in China files an application for a patent in China, the application shall be handled under this Law in accordance with any agreement concluded between the country to which the applicant belongs and China, or any international treaty to which both countries are party, or on the basis of the principle of reciprocity.

Article 19 Where any foreigner, foreign enterprise or other foreign organization having no habitual residence or business office in China applies for a patent, or has other patent matters to attend to,

in China, he or it shall appoint a patent agency designated by the patent administration department under the State Council to act as his or its agent.

If any Chinese entity or individual applies for a patent or has other patent matters to attend to in the country, it or he may entrust a patent agency to act on its or his behalf.

The patent agency shall comply with the provisions of laws and administrative regulations, and handle patent applications and other patent matters according to the instructions of its clients. In respect of the contents of its clients' inventions-creations, except for those that have been published or announced, the agency shall bear the responsibility of keeping them confidential. The administrative regulations governing the patent agency shall be formulated by the State Council.

Article 20 Where any Chinese entity or individual intends to file an application in a foreign country for a patent for invention-creation made in China, it or he shall file first an application for patent with the patent administration department under the State Council, appoint a patent agency designated by the said department to act as its or his agent, and comply with the provisions of Article 4 of this Law.

Any Chinese entity or individual may file an international application for patent in accordance with any international treaty concerned to which China is party. The applicant filing an international application for patent shall comply with the provisions of the preceding paragraph.

The patent administration department under the State Council shall handle any international application for patent in accordance with the international treaty concerned to which China is party, this Law and the relevant regulations of the State Council.

Article 21 The patent administration department under the State Council and the Patent Reexamination Board under the department shall handle any patent application and patent-related request according to law and in conformity with the requirements for being objective, fair, correct and timely.

Until the publication or announcement of the application for a patent, staff members of the patent administration department under the State Council and other persons involved have the duty to keep its content secret.

## Chapter II Conditions for the Grant of Patent Rights

Article 22 Any invention or utility model for which a patent right may be granted must possess the characteristics of novelty, inventiveness and usefulness.

"Novelty" means that, before the filing date of the application, no identical invention or utility model has been publicly disclosed in domestic or foreign publications or has been publicly used or made known to the public by any other means in the country, nor has any other person previously filed with the patent administration department under the State Council an application describing

an identical invention or utility model which was recorded in patent application documents published after the said date of filing.

"Inventiveness" means that, compared with the technology existing before the filing date of the application, the invention has prominent and substantive distinguishing features and represents a marked improvement, or the utility model possesses substantive distinguishing features and represents an improvement.

"Usefulness" means that the invention or utility model can be made or used and can produce positive results.

Article 23 No design for which patent right is to be granted may be identical with or similar to any design which, before the date of filing, has been publicly disclosed in publications in the country or abroad or has been publicly used in the country, or be in conflict with any prior legal rights of any other person.

Article 24 Any invention-creation for which a patent is applied shall not lose its novelty if, within six months before the filing date of the application, one of the following events has occurred:

- (1) it was exhibited for the first time at an international exhibition sponsored or recognized by the Chinese Government;
- (2) it was made public for the first time at a prescribed academic or technical conference; or
- (3) it was disclosed by any person without the consent of the applicant.

Article 25 For any of the following, no patent right shall be granted:

- (1) scientific discoveries;
- (2) rules and methods for mental activities;
- (3) methods for the diagnosis or for the treatment of diseases;
- (4) animal and plant varieties;
- (5) substances obtained by means of nuclear transformation.

For processes used in producing products referred to in item (4) of the preceding paragraph, patent right may be granted in accordance with the provisions of this Law.

### Chapter III Application for Patents

Article 26 When a patent application is filed for an invention or a utility model, relevant documents shall be submitted, including a written request, a specification and an abstract thereof, and a patent claim.

The written request shall state the title of the invention or utility model, the name of the inventor or designer, the name and address of the applicant and other related matters.

The specification shall describe the invention or utility model in a manner sufficiently clear and complete so that a person skilled in the relevant field of technology can accurately produce it; where necessary, drawings shall be appended. The abstract shall describe briefly the technical essentials of the invention or utility model.

The patent claim shall, on the basis of the specification, state the scope of the patent protection requested.

Article 27 When a patent application is filed for a design, relevant documents shall be submitted, including a written request and drawings or photographs of the design; the product on which the design is to be used and the category of that product shall also be indicated.

Article 28 The date on which the patent administration department under the State Council receives the patent application documents shall be the filing date of the application. If the application documents are sent by mail, the postmark date shall be the filing date of the application.

Article 29 Where, within twelve months from the date on which any applicant first filed in a foreign country an application for a patent for invention or utility model, or within six months from the date on which any applicant first filed in a foreign country an application for a patent for design, he or it files in China an application for a patent for the same subject matter, he or it may, in accordance with any agreement concluded between the said foreign country and China, or in accordance with any international treaty to which both countries are party, or on the basis of the principle of mutual recognition of the right of priority, enjoy a right of priority.

Where, within twelve months from the date on which any applicant first filed in China an application for a patent for invention or utility model, he or it files with the patent administration department under the State Council an application for a patent for the same subject matter, he or it may enjoy a right of priority.

Article 30 Any applicant who claims the right of priority shall make a written declaration when the application is filed, and submit, within three months, a copy of the patent application documents that was first filed; if the applicant fails to make the written declaration or fails to submit a copy of the patent application documents within the time limit, the claim to the right of priority shall be deemed not to have been made.

Article 31 Each patent application for invention or utility model shall be limited to a single invention or utility model. Two or more inventions or utility models belonging to a single inventive concept may be submitted together in one application.

Each patent application for design shall be limited to a single design used on one type of product. Two or more designs used on products belonging to a single category and sold or used in sets may be submitted together in one application.



Article 32 An applicant may withdraw his or its patent application at any time before the patent right is granted.

Article 33 An applicant may amend his or its application for a patent, but the amendment to the application for a patent for invention or utility model may not go beyond the scope of the disclosure contained in the initial description and the claims, and the amendment to the application for a patent for design may not go beyond the scope of the disclosure as shown in the initial drawings or photographs.

#### Chapter IV Examination and Approval of Patent Applications

Article 34 Where, after receiving an application for a patent for invention, the patent administration department under the State Council, upon preliminary examination, finds the application to be in conformity with the requirements of this Law, it shall publish the application promptly after the expiration of eighteen months from the date of filing. Upon the request of the applicant, the patent administration department under the State Council may publish the application earlier.

Article 35 Upon the applicant's request for an invention patent made at any time within three years from the filing date of an application, the patent administration department under the State Council may carry out substantive examination of that application. If, without any justified reason, the applicant fails to meet the time limit for requesting such substantive examination, the application shall be deemed to have been withdrawn.

The Patent administration department under the State Council may of its own accord carry out substantive examination of an application for an invention patent when it deems it necessary.

Article 36 When requesting substantive examination of an invention patent application, the applicant shall furnish reference materials concerning the invention that were available prior to the filing date of the application.

For an application for a patent for invention that has been already filed in a foreign country, the patent administration department under the State Council may ask the applicant to furnish within a specified time limit documents concerning any search made for the purpose of examining that application, or concerning the results of any examination made, in that country. If, at the expiration of the specified time limit, without any justified reason, the said documents are not furnished, the application shall be deemed to have been withdrawn.

Article 37 If, after completing the substantive examination of an invention patent application, the patent administration department under the State Council finds that the application does not conform with the provisions of this Law, it shall notify the applicant and ask him or it to state his or its observations or amend the application within a specified time limit. If, without any justified reason, the applicant fails to respond within the time limit, the application shall be deemed to have been withdrawn.

Article 38 If, after the applicant has stated his or its observations or made amendments, the patent administration department under the State Council still finds that the invention patent application does not conform with the provisions of this Law, it shall reject the application.

Article 39 Where it is found after examination as to substance that there is no cause for rejection of the application for a patent for invention, the patent administration department under the State Council shall make a decision to grant the patent right for invention, issue the certificate of patent for invention, and register and announce it. The patent right for invention shall take effect as of upon the date of the announcement.

Article 40 Where it is found after preliminary examination that there is no cause for rejection of the application for a patent for utility model or design, the patent administration department under the State Council shall make a decision to grant the patent right for utility model or the patent right for design, issue the relevant patent certificate, and register and announce it. The patent right for utility model or design shall take effect as of the date of the announcement.

Article 41 The patent administration department under the State Council shall set up a Patent Reexamination Board. Where an applicant for patent is not satisfied with the decision of the patent administration department under the State Council reject his or its application for patent, such applicant may, within three months from the date of receipt of the notification, request the Patent Reexamination Board to make a reexamination. The Patent Reexamination Board shall, after reexamination, make a decision and notify the applicant for patent of the decision.

Where the applicant for patent who is not satisfied with the decision of the Patent Reexamination Board, he or it may, within three months from the date of receipt of the notification, institute legal proceedings in the people's court.

## Chapter V Term, Termination and Invalidation of Patent Rights

Article 42 The duration of patent right for inventions shall be twenty years, and the duration of the patent right for utility models and patent right for designs shall be ten years, counted from the date of filing.

Article 43 The patentee shall pay an annual fee beginning with the year in which his or its patent right is granted.

Article 44 In either of the following cases, the patent right shall be terminated prior to the expiration of its term:

- (1) if the annual fee is not paid as prescribed; or
- (2) if the patentee renounces his or its patent right by a written declaration.

The termination of a patent right shall be registered and publicly announced by the patent administration department under the State Council.

Article 45 Where, starting from the date of the announcement of the grant of a patent right by the patent administration department under the State Council, any entity or individual considers that the grant of the said patent right is not in conformity with the relevant provisions of this Law, it or he may request the Patent Reexamination Board to declare the patent right invalid.

Article 46 For any request for invalidation of a patent right, the Patent Reexamination Board shall examine it promptly, make a decision on it and notify the person who makes the request and the patentee of the decision. The decision declaring the patent right invalid shall be registered and announced by the patent administration department under the State Council.

Where the patentee or the person who makes the request for invalidation is not satisfied with the decision of the Patent Reexamination Board declaring the patent right invalid or upholding the patent right, such party may, within three months from receipt of the notification of the decision, institute legal proceedings in the people's court. The people's court shall notify the person that is the opponent party of that party in the invalidation procedure to appear as a third party in the legal proceedings.

Article 47 Any patent right which has been declared invalid shall be deemed to be non-existent from the beginning.

Prior to the declaration of the patent right invalid, the decision to declare the patent right invalid shall have no retroactive effect on any judgement or ruling of patent infringement which has been pronounced and enforced by the people's court, on any decision concerning the handling of a dispute over patent infringement which has been complied with or compulsorily executed, or on any contract of patent license or of assignment of patent right which has been performed. However, the damage caused to other persons in bad faith on the part of the patentee shall be compensated.

If, pursuant to the provisions of the preceding paragraph, the patentee or the assignor of the patent right makes no repayment to the licensee or the assignee of the patent right of the fee for the exploitation of the patent or of the price for the assignment of the patent right, which is obviously contrary to the principle of equity, the patentee or the assignor of the patent right shall repay the whole or part of the fee for the exploitation of the patent or of the price for the assignment of the patent right to the licensee or the assignee of the patent right.

## Chapter VI Compulsory Licence for Exploitation of a Patent

Article 48 Where any entity which is qualified to exploit the invention or utility model has made a request for authorization from the patentee of an invention or a utility model to exploit its or his patent on reasonable terms and has been unable to obtain such authorization within a reasonable period of time, the patent administration department under the State Council may, upon the application of that entity, grant a compulsory license to exploit the patent for the invention or utility model.

Article 49 Where a national emergency or an extraordinary state of affairs occurs, or where the public interest so requires, the patent administration department under the State Council may grant a compulsory license to exploit the patent for invention or utility model.

Article 50 Where the invention or utility model for which the patent right has been granted constitutes important technical advance of considerable economic significance compared with another invention or utility model for which a patent right has been granted earlier and the exploitation of the later invention or utility model depends on the exploitation of the earlier invention or utility model, the patent administration department under the State Council may, upon the request of the later patentee, grant a compulsory license to exploit the earlier invention or utility model.

Article 51 Any entity or individual applying for a compulsory licence in accordance with the provisions of this Law shall furnish proof that it or he has not been able to conclude a licensing contract on reasonable terms with the patentee.

Article 52 The decision made by the patent administration department under the State Council granting a compulsory license for exploitation shall be notified promptly to the patentee concerned, and shall be registered and announced.

In the decision granting the compulsory license for exploitation, the scope and duration of the exploitation shall be specified on the basis of the reasons justifying the grant. If and when the circumstances which lead to such compulsory license cease to exist and are unlikely to recur, the patent administration department under the State Council may, upon the request of the patentee, terminate the compulsory license after examination.

Article 53 Any entity or individual that is granted a compulsory licence shall not have an exclusive right to exploit the patent in question, nor shall it or he have the right to authorize exploitation of the patent by others.

Article 54 Any entity or individual that is granted a compulsory licence shall pay the patentee a reasonable exploitation fee. The amount of the fee shall be decided by both parties through consultation. Where the parties fail to reach an agreement, the patent administration department under the State Council shall make a ruling.

Article 55 Where the patentee is not satisfied with the decision of the patent administration department under the State Council granting a compulsory license for exploitation, or where the patentee or the entity or individual that is granted the compulsory license for exploitation is not satisfied with the ruling made by the patent administration department under the State Council regarding the fee payable for exploitation, he or it may, within three months from the date of receipt of the notification, institute legal proceedings in the people's court.

## Chapter VII Protection of Patent rights

Article 56 The scope of protection in the patent right for an invention or a utility model shall be determined by the contents of the patent claim. The specification and appended drawings may be used to interpret the patent claim.

The scope of protection in the patent right for a design shall be determined by the product incorporating the patented design as shown in the drawings or photographs.

Article 57 Where a dispute arises as a result of the exploitation of a patent without the authorization of the patentee, that is, the infringement of the patent right of the patentee, it shall be settled through consultation by the parties. Where the parties are not willing to consult with each other or where the consultation fails, the patentee or any interested party may institute legal proceedings in the people's court, or request the administrative authority for patent affairs to handle the matter. When the administrative authority for patent affairs handling the matter considers that the infringement is established, it may order the infringer to stop the infringing act immediately. If the infringer is not satisfied with the order, he may, within 15 days from the date of receipt of the notification of the order, institutes legal proceedings in the people's court in accordance with the Administrative Procedure Law of the People's Republic of China. If, within the said time limit, such proceedings are not instituted and the order is not complied with, the administrative authority for patent affairs may approach the people's court for compulsory execution. The said authority handling the matter may, upon the request of the parties, mediate in the amount of compensation for the infringement of the patent right. If the mediation fails, the parties may institute legal proceedings in the people's court in accordance with the Civil Procedure Law of the People's Republic of China.

Where any infringement dispute relates to a patent for invention for a process for the manufacture of a new product, any entity or individual manufacturing the identical product shall furnish proof to show that the process used in the manufacture of its or his product is different from the patented process. Where the infringement relates to a patent for utility model, the people's court or the administrative authority for patent affairs may ask the patentee to furnish a search report made by the patent administration department under the State Council.

Article 58 Where any person passes the patent of another person off as his own, he shall, in addition to bearing his civil liability according to law, be ordered by the administrative authority for patent affairs to make rectification, and the order shall be announced. His illegal earnings shall be confiscated and, in addition, he may be imposed a fine of not more than three times his illegal earnings and, if there is no illegal earnings, a fine of not more than RMB 50,000 yuan. Where the infringement constitutes a crime, he shall be investigated for his criminal liability.

Article 59 Where any person passes any non-patented product off as patented product or passes any non-patented process off as patented process, he shall be ordered by the administrative authority for patent affairs to make rectification, and the order shall be announced, in addition, he may be imposed a fine of not no more than RMB 50,000 yuan.

Article 60 The amount of compensation for the damage caused by the infringement of the patent right shall be assessed on the basis of the losses suffered by the patentee whose right was infringed or the profits, which the infringer has earned through the infringement. If it is difficult to determine the losses which the patentee has suffered or the profits which the infringer has earned, the amount may be assessed by reference to the appropriate multiple of the amount of the exploitation fee of that patent under contractual license.

Article 61 Where any patentee or interested party has evidence to prove that another person is infringing or will soon infringe its or his patent right and that if such infringing act is not checked or prevented from occurring in time, it is likely to cause irreparable harm to it or him, it or he may, before any legal proceedings are instituted, request the people's court to adopt measures for ordering the suspension of relevant acts and the preservation of property.

The people's court, when dealing with the request mentioned in the preceding paragraph, shall apply the provisions of Article 93 through Article 96 and of Article 99 of the Civil Procedure Law of the People's Republic of China.

Article 62 The period of limitation for filing a suit concerning the infringement of a patent right shall be two years, counted from the day on which the patentee or the interested parties became aware or should have become aware of the act of infringement.

Where no appropriate fee for exploitation of the invention, subject of an application for patent for invention, during the period from the publication of the application for the patent to the grant of patent right to the said invention is paid, prescription for instituting legal proceedings by the patentee to demand the said fee is two years counted from the date on which the patentee obtains or should have obtained knowledge of the exploitation of his invention by another person. However, where the patentee has already obtained or should have obtained knowledge before the date of the grant of the patent right, the prescription shall be counted from the date of the grant.

Article 63 None of the following shall be deemed an infringement of the patent right:

- (1) Where, after the sale of a patented product that was made or imported by the patentee or with the authorization of the patentee, or that was directly obtained by using the patented process, any other person uses, offers to sell or sells that product;
- (2) Where, before the date of filing of the application for patent, any person who has already made the identical product, used the identical process, or made the necessary preparations for its making or using, continues to make or use it within the original scope only;
- (3) Where any foreign means of transport which temporarily passes through the territory, territorial waters or territorial airspace of China uses the patent concerned, in accordance with any agreement concluded between the country to which the foreign means of transport belongs and China, or in accordance with any international treaty to which both countries are party, or on the basis of the principle of reciprocity, for its own needs, in its devices and installations;
- (4) Where any person uses the patent concerned solely for the purposes of scientific research and experimentation.

Any person who, for production and business purposes, uses or sells a patented product without knowing that it was made and sold without the authorization of the patentee or that it was directly obtained by a patented process, shall not be liable to compensate for the damage of the patentee if he can prove that he obtains the product from a legitimate source.

Article 64 Anyone who, in violation of the provisions of Article 20 of this Law, files in a foreign country an application for a patent which divulges State secrets shall be given administrative

sanction by the unit to which he belongs or by the competent department at a higher level. If the case constitutes a crime, he shall be investigated for criminal liability in accordance with law.

Article 65 Anyone who usurps the right of an inventor or designer to apply for a patent for a non-job-related invention-creation or usurps the other rights or interests of an inventor or designer prescribed in this Law shall be given administrative sanction by the unit to which he belongs or by the competent department at a higher level.

Article 66 The administrative authority for patent affairs may not take part in recommending any patented product for sale to the public or any such commercial activities.

Where the administrative authority for patent affairs violates the provisions of the preceding paragraph, it shall be ordered by the authority at the next higher level or the supervisory authority to correct its mistakes and eliminate the bad effects. The illegal earnings, if any, shall be confiscated. Where the circumstances are serious, the persons who are directly in charge and the other persons who are directly responsible shall be given disciplinary sanction in accordance with law.

Article 67 Where any State functionary working for patent administration or any other State functionary working for patent administration or any other State functionary concerned neglects his duty, abuses his power, or engages in malpractice for personal gain, which constitutes a crime, shall be investigated for his criminal liability in accordance with law. If the case is not serious enough to constitute a crime, he shall be given disciplinary sanction in accordance with law.

## Chapter VIII Supplementary Provisions

Article 68 Rules for the implementation of this Law shall be formulated by the patent administration department under the State Council and submitted to the State Council for approval before they are put into effect.

Article 69 This Law shall go into effect on April 1, 1985.

## **Copyright Law of People's Republic of China**

Adopted at the 15th Meeting of the Standing Committee of the Seventh National People's Congress on September 7, 1990 and promulgated by Order No.31 of the President of the People's Republic of China on September 7, 1990; amended according to the Decision on Amending the Copyright Law of the People's Republic of China at the 24th Meeting of the Standing Committee of the Ninth National People's Congress on October 27, 2001

### Contents

#### Chapter I General Provisions

#### Chapter II Copyright

##### Section 1 Copyright Owners and Their Rights

##### Section 2 Ownership of Copyright

##### Section 3 Term of Protection for the Rights

##### Section 4 Limitations on Rights

#### Chapter III Copyright Licensing and Transfer Contracts

#### Chapter IV Publication, Performance, Sound Recording, Video Recording and Broadcasting

##### Section 1 Publication of Books, Newspapers and Periodicals

##### Section 2 Performance

##### Section 3 Sound Recording and Video Recording

##### Section 4 Broadcasting by a Radio Station or Television Station

#### Chapter V Legal Liabilities and Enforcement Measures

#### Chapter VI Supplementary Provisions

#### Chapter I General Provisions

Article 1 This law is enacted, in accordance with the Constitution, for the purpose of protecting the copyright of authors in their literary, artistic and scientific works and the rights and interests related to copyright, encouraging the creation and dissemination of works conducive to the building of a socialist society that is advanced ethically and materially, and promoting the progress and flourishing of socialist culture and sciences.



Article 2 Chinese citizens, legal entities or other organizations shall, in accordance with this Law, enjoy the copyright in their works, whether published or not.

The copyright enjoyed by foreigners or stateless persons in any of their works under an agreement concluded between China and the country to which they belong or in which they have their habitual residences, or under an international treaty to which both countries are parties, shall be protected by this Law.

Foreigners and stateless persons whose works are first published in the territory of China shall enjoy the copyright in accordance with this Law.

Any work of an author of a country that has not concluded any agreement with China or that is not a party to any international treaty to which China is a party and any work of a stateless person, which is first published in a member country of an international treaty to which China is a party, or simultaneously published in a member country of the treaty and in a non-member country, shall be protected by this Law.

Article 3 For purposes of this law, the term "works" includes, among other things, works of literature, art, natural sciences, social sciences, engineering and technology, which are created in any of the following forms:

- (1) written works;
- (2) oral works;
- (3) musical, dramatic, quyi, choreographic and acrobatic works;
- (4) works of the fine arts and architecture;
- (5) photographic works;
- (6) cinematographic works and works created by a process analogous to cinematography;
- (7) graphic works such as drawings of engineering designs and product designs, maps and sketches, and model works;
- (8) computer software; and
- (9) other works as provided for in laws and administrative regulations.

Article 4 Works the publication and dissemination of which are prohibited by law shall not be protected by this Law.

In exercising their copyright, no copyright owners may violate the Constitution or laws, nor may they impair public interests.

Article 5 This Law shall not be applicable to:

- (1) laws and regulations, resolutions, decisions and orders of State organs, other documents of a legislative, administrative or judicial nature and their official translations;

(2) news on current affairs; and

(3) calendars, numerical tables and forms of general use, and formulas.

Article 6 Measures for the protection of copyright in works of folk literature and art shall be formulated separately by the State Council.

Article 7 The administrative department for copyright under the State Council shall be responsible for the administration of copyright nationwide. The administrative departments for copyright under the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall be responsible for the administration of copyright in their respective administrative regions.

Article 8 Copyright owners or owners of the rights related to the copyright may authorize collective copyright administration organizations to exercise their copyright or rights related to the copyright. Upon authorization, a collective copyright administration organization may exercise the copyright or the rights related to the copyright in its own name for the copyright owner or the owner of the rights related to the copyright and participate as a party in legal or arbitration proceedings concerning the copyright or the rights related to the copyright.

Collective copyright administration organizations are non-profit organizations, and regulations concerning the way of their establishment, their rights and obligations, their collection and distribution of copyright licensing fees, and their supervision and administration shall be formulated separately by the State Council.

## Chapter II Copyright

### Section 1 Copyright Owners and Their Rights

Article 9 Copyright owners include:

(1) authors; and

(2) other citizens, legal entities and other organizations enjoying the copyright in accordance with this Law.

Article 10 Copyright includes the following personal rights and property rights:

(1) the right of publication, that is, the right to decide whether to make a work available to the public;

(2) the right of authorship, that is, the right to claim authorship in respect of, and to have the author's name mentioned in connection with, a work;

(3) the right of revision, that is, the right to revise or authorize others to revise a work;

- (4) the right of integrity, that is, the right to protect a work against distortion and mutilation;
- (5) the right of reproduction, that is, the right to produce one or more copies of a work by printing, photocopying, lithographing, making a sound recording or video recording, duplicating a recording, or duplicating a photographic work, or by other means;
- (6) the right of distribution, that is, the right to provide the original copy or reproductions of a work to the public by selling or donating;
- (7) the right of rental, that is, the right to authorize others to use temporarily a cinematographic work or a work created by a process analogous to cinematography, or computer software, except where the software itself is not the essential object of the rental;
- (8) the right of exhibition, that is, the right to publicly display the original copy or reproductions of a work of the fine arts or of a photographic work;
- (9) the right of performance, that is, the right to publicly perform a work, and to publicly communicate the performance of a work by any means or process;
- (10) the right of presentation, that is, the right to publicly present a work of the fine arts, a photographic work, a cinematographic work, a work created by a process analogous to cinematography, or other works, by projector, slide projector or any other technology or instrument;
- (11) the right of broadcasting, that is, the right to broadcast a work or disseminate it to the public by any wireless means, to communicate the broadcast of a work to the public by wire or by rebroadcasting, and to publicly communicate the broadcast of a work by loudspeaker or any other analogous instrument transmitting signs, sounds or images;
- (12) the right of communication through information network, that is, the right to make a work available to the public by wire or by wireless means, so that people may have access to the work from a place and at a time individually chosen by them;
- (13) the right of cinematography, that is, the right to fix an adaptation of a work in a medium by cinematography or a process analogous to cinematography;
- (14) the right of adaptation, that is, the right to change a work into a new one with originality;
- (15) the right of translation, that is, the right to change the language in which the work is written into another language;
- (16) the right of compilation, that is, the right to compile by selection or arrangement preexisting works or passages therefrom into a new work; and
- (17) other rights to be enjoyed by copyright owners.

Copyright owners may authorize others' exercising of the rights provided for in Subparagraph (5) through Subparagraph (17) of the preceding paragraph and receive remuneration in accordance with the terms of contracts or the relevant provisions in this Law.

Copyright owners may transfer, wholly or in part, the rights provided for in Subparagraph (5) through Subparagraph (17) of the first paragraph in this Article and receive fees in accordance with the terms of contracts or the relevant provisions in this Law.

## Section 2 Ownership of Copyright

Article 11 Except where otherwise provided for in this Law, the copyright in a work shall belong to its author.

The author of a work is the citizen who creates the work.

Where a work is created under the auspices and according to the intention of a legal entity or other organization, which bears responsibility for the work, the said legal entity or organization shall be deemed to be the author of the work.

The citizen, legal entity or other organization whose name is mentioned in connection with a work shall, in the absence of proof to the contrary, be deemed to be the author of the work.

Article 12 Where a work is created by adaptation, translation, annotation or arrangement of a preexisting work, the copyright in the work thus created shall be enjoyed by the adapter, translator, annotator or arranger, provided that the exercise of such copyright does not prejudice the copyright in the preexisting work..

Article 13 Where a work is created jointly by two or more authors, the copyright in the work shall be enjoyed jointly by the co-authors. No co-authorship may be claimed by anyone who has not participated in the creation of the work.

Where a work of joint authorship can be separated into parts and exploited separately, each co-author may be entitled to independent copyright in the part that he creates, provided that the exercise of such copyright does not prejudice the copyright in the joint work as a whole.

Article 14 A collection of preexisting works or passages therefrom, or of data or other material which does not constitute a work, if manifesting the originality of a work by reason of the selection or arrangement of its contents, is a compilation. The copyright in such compilation shall be enjoyed by the compiler, provided that the exercise of such copyright does not prejudice the copyright in the preexisting works.

Article 15 The copyright in a cinematographic work or in a work created by a process analogous to cinematography shall be enjoyed by the producer of the work, while its scriptwriter, director, cameraman, lyricist, composer and other authors shall enjoy the right of authorship therein and shall be entitled to receive remuneration in accordance with the terms of the contracts concluded between them and the producer.

The authors of the script, the musical works and the other works which are included in a cinematographic work or in a work created by a process analogous to cinematography and which can be exploited separately shall be entitled to exercise their copyright independently.

Article 16 A work created by a citizen in the fulfillment of tasks assigned to him by a legal entity or other organization is a work created in the course of employment. Subject to the provisions of the

second paragraph of this Article, the copyright in such work shall be enjoyed by the author; however, the legal entity or other organization shall have priority to exploit the work within the scope of its professional activities. Within two years after the completion of the work, the author may not, without the consent of the legal entity or other organization, authorize the exploitation of the work by a third party in the same manner as the legal entity or other organization exploits the work.

In any of the following cases, the author of a work created in the course of employment shall enjoy the right of authorship, while the legal entity or other organization shall enjoy the other rights included in the copyright and may reward the author:

(1) drawings of engineering designs and product designs, maps, computer software and other works which are created in the course of employment mainly with the material and technical resources of the legal entity or other organization and for which the legal entity or other organization bears responsibility;

(2) works created in the course of employment the copyright in which is, in accordance with laws, administrative regulations or contracts, enjoyed by the legal entity or other organization.

Article 17 The ownership of the copyright in a commissioned work shall be agreed upon in a contract between the commissioning and the commissioned parties. In the absence of such a contract or of an explicit agreement in such a contract, the copyright in the work shall belong to the commissioned party.

Article 18 The transfer of ownership of the original copy of a work of the fine arts or other works shall not be deemed to include the transfer of the copyright in such work or works; however, the right to exhibit the original copy of the work of the fine arts shall be enjoyed by the owner of the original copy.

Article 19 Where the copyright in a work belongs to a citizen, the rights as provided for in Subparagraph (5) through Subparagraph (17) of the first paragraph in Article 10 of this Law in respect of the work shall, after his death and during the term of protection provided for in this Law, be transferred in accordance with the provisions of the Law of Succession.

Where the copyright in a work belongs to a legal entity or other organization, the rights provided for in Subparagraph (5) through Subparagraph (17) of the first paragraph in Article 10 of this Law shall, after the change or the termination of the status of the legal entity or other organization and during the term of protection provided for in this Law, be enjoyed by the succeeding legal entity or other organization which takes over the former's rights and obligations, or, in the absence of such succeeding entity or organization, by the State.

### Section 3 Term of Protection for the Rights

Article 20 No time limit shall be set on the term of protection for an author's rights of authorship and revision and his right to protect the integrity of his work.

Article 21 In respect of a work of a citizen, the term of protection for the right of publication and the rights as provided for in Subparagraph (5) through Subparagraph (17) of the first paragraph in

Article 10 of this Law shall be the lifetime of the author and fifty years after his death, expiring on December 31 of the fiftieth year after his death. In the case of a work of joint authorship, the term shall expire on December 31 of the fiftieth year after the death of the last surviving author.

In respect of a work of a legal entity or other organization or a work which is created in the course of employment and the copyright (except the right of authorship) in which is enjoyed by a legal entity or other organization, the term of protection for the right of publication and the rights as provided for in Subparagraph (5) through Subparagraph (17) of the first paragraph in Article 10 of this Law shall be fifty years, expiring on December 31 of the fiftieth year after the first publication of such work; however, such work shall no longer be protected under this Law if it is not published within fifty years after the completion of its creation.

In respect of a cinematographic work, a work created by a process analogous to cinematography or a photographic work, the term of protection for the right of publication and the rights as provided for in Subparagraph (5) through Subparagraph (17) of the first paragraph in Article 10 of this Law shall be fifty years, expiring on December 31 of the fiftieth year after the first publication of such work; however, such work shall no longer be protected under this Law if it is not published within fifty years after the completion of its creation.

#### Section 4 Limitations on Rights

Article 22 In the following cases, a work may be used without permission from, and without payment of remuneration to, the copyright owner, provided that the name of the author and the title of the work are mentioned and the other rights enjoyed by the copyright owner in accordance with this Law are not prejudiced:

- (1) use of another person's published work for purposes of the user's own personal study, research or appreciation;
- (2) appropriate quotation from another person's published work in one's own work for the purpose of introducing or commenting a certain work, or explaining a certain point;
- (3) unavoidable inclusion or quotation of a published work in the media, such as in a newspaper, periodical and radio and television program, for the purpose of reporting current events;
- (4) publishing or rebroadcasting by the media, such as a newspaper, periodical, radio station and television station, of an article published by another newspaper or periodical, or broadcast by another radio station or television station, etc. on current political, economic or religious topics, except where the author declares that such publishing or rebroadcasting is not permitted;
- (5) publishing or broadcasting by the media, such as a newspaper, periodical, radio station and television station of a speech delivered at a public gathering, except where the author declares that such publishing or broadcasting is not permitted;
- (6) translation, or reproduction in a small quantity of copies of a published work by teachers or scientific researchers for use in classroom teaching or scientific research, provided that the translation or the reproductions are not published for distribution;

(7) use of a published work by a State organ to a justifiable extent for the purpose of fulfilling its official duties;

(8) reproduction of a work in its collections by a library, archive, memorial hall, museum, art gallery, etc. for the purpose of display, or preservation of a copy, of the work;

(9) gratuitous live performance of a published work, for which no fees are charged to the public, nor payments are made to the performers;

(10) copying, drawing, photographing or video-recording of a work of art put up or displayed in an outdoor public place;

(11) translation of a published work of a Chinese citizen, legal entity or other organization from Han language into minority nationality languages for publication and distribution in the country; and

(12) transliteration of a published work into braille for publication.

The provisions of the preceding paragraph shall be applicable also to the rights of publishers, performers, producers of sound recordings and video recordings, radio stations and television stations.

Article 23 Except where the author declares in advance that use of his work is not permitted, passages from a work, a short written work, musical work, a single work of the fine arts or photographic work which has been published may, without permission from the copyright owner, be compiled in textbooks for the purpose of compiling and publishing textbooks for the nine-year compulsory education and for national education planning, provided that remuneration is paid, the name of the author and the title of the work are mentioned, and the other rights enjoyed by the copyright owner in accordance with this Law are not prejudiced.

The provisions of the preceding paragraph shall be applicable also to the rights of publishers, performers, producers of sound recordings and video recordings, radio stations and television stations.

### Chapter III Copyright Licensing and Transfer Contracts

Article 24 Anyone who exploits another person's work shall conclude a copyright licensing contract with the copyright owner, except where no permission need be obtained under this Law.

A licensing contract shall include the following main points:

(1) the category of the right to exploit the work covered by the license;

(2) the exclusive or non-exclusive nature of the right to exploit the work covered by the license;

(3) the territory and the term covered by the license;

- (4) the rates of remuneration and the means of payment;
- (5) the liabilities in the case of breach of the contract; and
- (6) other matters which the parties consider it necessary to agree upon.

Article 25 Anyone who transfers any of the rights provided for in Subparagraph (5) through Subparagraph (17) of the first paragraph in Article 10 of this Law shall conclude a written contract.

A copyright transfer contract shall include the following main points:

- (1) the title of the work;
- (2) the category of the right to be transferred and the territory covered by the transfer;
- (3) the rates of the transfer fee;
- (4) the date and the means of payment of the transfer fee;
- (5) the liabilities in the case of breach of the contract; and
- (6) other matters that the parties consider it necessary to agree upon.

Article 26 The other party may not, without permission from the copyright owner, exercise any right that is not explicitly licensed or transferred by the copyright owner in the contract.

Article 27 The rates of remuneration for the exploitation of a work may be agreed upon by the parties and may also be paid in accordance with the rates fixed by the administrative department for copyright under the State Council in conjunction with the other departments concerned. In the absence of an explicit agreement in the contract, the remuneration shall be paid in accordance with the rates fixed by the said department under the State Council in conjunction with the other departments concerned.

Article 28 No publishers, performers, producers of sound recordings and video recordings, radio stations, television stations, etc. that exploit another person's work in accordance with the relevant provisions of this Law may infringe upon the authors' rights of authorship, revision or protection of the integrity of the works, or their right to remuneration.

## Chapter IV Publication, Performance, Sound Recording, Video Recording and Broadcasting

### Section 1 Publication of Books, Newspapers and Periodicals

Article 29 A book publisher who intends to publish a book shall conclude a publishing contract with, and pay remuneration to, the copyright owner.



Article 30 The exclusive right enjoyed by the book publisher in accordance with the agreement in the contract to publish a work that the copyright owner delivered to him for publishing shall be protected by law, and the work may not be published by others.

Article 31 The copyright owner shall deliver the work within the term specified in the contract. The book publisher shall publish the work in compliance with the quality requirements and within the term as specified in the contract.

The book publisher who fails to publish the work within the term specified in the contract shall bear civil liabilities provided for in Article 53 of this Law.

When the book publisher reprints or republishes the work, it shall notify the copyright owner of the matter and pay remuneration to him. If the publisher refuses to reprint or republish the work when the stock of the book is exhausted, the copyright owner shall have the right to terminate the contract.

Article 32 Where a copyright owner has submitted the manuscript of his work to a newspaper or periodical publisher for publication and has not received, within 15 days from the newspaper or within 30 days from the periodical publisher, counted from the date of submission of the manuscript, any notification of the said newspaper's or publisher's decision to publish the work, the copyright owner may submit the manuscript of the same work to another newspaper or periodical publisher for publishing, unless the parties have agreed otherwise.

Except where the copyright owner declares that no reprinting or excerpting of his work is permitted, a newspaper or periodical publisher may, after the work is published by another newspaper or periodical publisher, reprint the work or print an abstract of it or print it as reference material, provided that remuneration is paid to the copyright owner in accordance with relevant regulations.

Article 33 A book publisher may, with the permission of the author, revise or abridge the work.

A newspaper or periodical publisher may make editorial modifications and abridgments in the language of a work. Any revision in the contents of the work shall be subject to permission by the author.

Article 34 When publishing a work created by adaptation, translation, annotation, arrangement or compilation of a preexisting work, the publisher shall obtain permission from, and pay remuneration to, both the owner of the copyright in the work created by adaptation, translation, annotation, arrangement or compilation and the owner of the copyright in the preexisting work.

Article 35 A publisher shall have the right to permit another person to exploit, or prohibit such person from exploiting, the typographical design of the book or the periodical which he publishes.

The term of protection for the right specified in the preceding paragraph shall be ten years, expiring on December 31 of the tenth year after the first publication of the book or the periodical in which the typographical design is used.

## Section 2 Performance

Article 36 A performer (an individual performer or a performing group) who exploits, for a performance, a work created by another person shall obtain permission from, and pay remuneration to, the copyright owner. Where a performance is organized by a person, the organizer shall obtain permission from, and pay remuneration to, the copyright owner.

Anyone who exploits, for a performance, a work created by adaptation, translation, annotation or arrangement of a preexisting work shall obtain permission from, and pay remuneration to, both the owner of the copyright in the work created by adaptation, translation, annotation or arrangement and the owner of the copyright in the preexisting work.

Article 37 A performer shall, in respect of his performance, enjoy the following rights:

- (1) to claim performership;
- (2) to protect the image inherent in his performance from distortion;
- (3) to authorize others' live broadcasting or communicating to the public of his performance, and receive remuneration therefrom;
- (4) to authorize others' making of sound recordings and video recordings of his performance, and receive remuneration therefrom;
- (5) to authorize others' reproduction and distribution of the sound recordings and video recordings of his performance, and receive remuneration therefrom; and
- (6) to authorize others' making of his performance available to the public through information network, and receive remuneration therefrom.

A person who is authorized exploitation of a work in the manner provided for in Subparagraph (3) through Subparagraph (6) of the preceding paragraph shall, in addition, obtain permission from, and pay remuneration to, the copyright owner.

Article 38 No time limit shall be set on the term of protection for the rights provided for in Subparagraphs (1) and (2) of the first paragraph in Article 37 of this Law.

The term of protection for the rights provided for in Subparagraph (3) through Subparagraph (6) of the first paragraph in Article 37 of this Law shall be fifty years, expiring on December 31 of the fiftieth year after the performance takes place.

### Section 3 Sound Recording and Video Recording

Article 39 A producer of sound recordings or video recordings who exploits, for making a sound recording or video recording, a work created by another person shall obtain permission from, and pay remuneration to, the copyright owner.

A producer of sound recordings or video recordings who exploits a work created by adaptation, translation, annotation or arrangement of a preexisting work shall obtain permission from, and pay remuneration to, both the owner of the copyright in the work created by adaptation, translation, annotation or arrangement and the owner of the copyright in the preexisting work.

A producer of sound recordings who exploits, for making a sound recording, a musical work of which a lawful sound recording has been made, may do without permission from the copyright owner, but shall, in accordance with regulations, pay remuneration to the copyright owner; no such work may be exploited where the copyright owner declares that exploitation is not permitted.

Article 40 When making a sound recording or video recording of a performance, the producer shall conclude a contract with, and pay remuneration to, the performer.

Article 41 The producer of a sound recording or video recording shall enjoy the right to authorize others' reproducing, distributing or renting the sound recording or video recording or making it available to the public through information network and to receive remuneration therefrom. The term of protection for such right shall be fifty years, expiring on December 31 of the fiftieth year after the first completion of the recording.

Anyone who is authorized reproducing or distributing a sound recording or video recording or making it available to the public through information network shall, in addition, obtain permission from, and pay remuneration to, both the copyright owner and the performer.

#### Section 4 Broadcasting by a Radio Station or Television Station

Article 42 A radio station or television station that broadcasts an unpublished work created by another person shall obtain permission from, and pay remuneration to, the copyright owner.

A radio station or television station that broadcasts a published work created by another person may do without permission from, but shall pay remuneration to, the copyright owner.

Article 43 A radio station or television station that broadcasts a published sound recording may do without permission from, but shall pay remuneration to, the copyright owner, unless the parties have agreed otherwise. Specific measures in this regard shall be formulated by the State Council.

Article 44 A radio station or television station shall have the right to prohibit the following acts performed without its permission:

- (1) broadcasting its programs; and
- (2) making a sound recording or video recording of its programs and reproducing such recording.

The term of protection for the right specified in the preceding paragraph shall be fifty years, expiring on December 31 of the fiftieth year after the first broadcasting of a program.

Article 45 A television station that intends to broadcast a cinematographic work or a work created by a process analogous to cinematography, or a video recording produced by another person, shall obtain permission from, and pay remuneration to, the producer; in the case of a video recording, the television station shall, in addition, obtain permission from, and pay remuneration to, the copyright owner.

#### Chapter V Legal Liabilities and Enforcement Measures

Article 46 Anyone who commits any of the following acts of infringement shall, depending on the circumstances, bear civil liabilities such as ceasing the infringement, eliminating the bad effects of the act, making an apology or paying compensation for damages:

- (1) publishing a work without permission of the copyright owner;
- (2) publishing a work of joint authorship as a work created solely by oneself, without permission of the other co-authors;
- (3) having one's name mentioned in another person's work in the creation of which one has taken no part, in order to seek personal fame and gain;
- (4) distorting or mutilating a work created by another person;
- (5) plagiarizing a work created by another person;
- (6) exploiting a work for exhibition or film-making or in a manner analogous to film-making, or for adaptation, translation, annotation, or for other purposes, without permission of the copyright owner, except where otherwise provided for in this Law;
- (7) exploiting a work created by another person without paying remuneration as one should;
- (8) renting a cinematographic work or a work created by a process analogous to cinematography, computer software, or products of sound recording or video recording, without permission of the copyright owner or the owner of the rights related to the copyright, except where otherwise provided for in this Law;
- (9) exploiting the typographical design of a published book or periodical, without permission of the publisher;
- (10) live broadcasting, communicating to the public, or recording a performance, without permission of the performer; or
- (11) committing other acts infringing upon the copyright and the rights related to the copyright.

Article 47 Anyone who commits any of the following acts of infringement shall, depending on the circumstances, bear civil liabilities such as ceasing the infringement, eliminating the bad effects of the act, making an apology or paying compensation for damages; where public rights and interests are impaired, the administrative department for copyright may order the person to discontinue the infringement, confiscate his unlawful gains, confiscate or destroy the copies produced through infringement, and may also impose a fine; where the circumstances are serious, the said department may, in addition, confiscate the material, tools and instruments mainly used to produce copies through infringement; and where a crime is constituted, criminal liabilities shall be investigated in accordance with law:

- (1) reproducing, distributing, performing, presenting, broadcasting, compiling a work or making it available to the public through information network, without permission of the copyright owner, except where otherwise provided for in this Law;
- (2) publishing a book the exclusive right of publication in which is enjoyed by another person;
- (3) reproducing or distributing a sound recording or video recording of a performance, or making a performance available to the public through information network, without permission of the performer, except where otherwise provided for in this Law;
- (4) reproducing or distributing a product of sound recording or video recording or making it available to the public through information network, without permission of the producer, except where otherwise provided for in this Law;
- (5) rebroadcasting a radio or television program or reproducing such a program without permission, except where otherwise provided for in this Law;
- (6) intentionally circumventing or sabotaging the technological measures adopted by a copyright owner or an owner of the rights related to the copyright to protect the copyright or the rights related to the copyright in the work or the products sound recording or video recording, without permission of the owner, except where otherwise provided for in laws or administrative regulations;
- (7) intentionally removing or altering any electronic rights management information attached to a copy of a work, a product of sound recording or video recording, etc. without permission of the copyright owner or the owner of the rights related to the copyright, except where otherwise provided for in this Law; or
- (8) producing or selling a work the authorship of which is counterfeited.

Article 48 Anyone who infringes upon the copyright or a right related to the copyright shall pay compensation for the actual losses suffered by the right owner, or where the actual losses are difficult to calculate, pay compensation to the amount of the unlawful gains of the infringer. The compensation shall include the reasonable expenses that the right owner has paid for putting a stop to the infringement.

Where the actual losses of the right owner or the unlawful gains of the infringer cannot be determined, the People's Court shall, in light of the circumstances of the infringement, decide on a compensation amounting to not more than 500,000 RMB yuan.

Article 49 Where a copyright owner or an owner of a right related to the copyright who can present evidence to prove that another person is committing, or is about to commit, an infringement upon his right, which, unless prevented promptly, is likely to cause irreparable harm to his legitimate rights and interests, he may, before taking legal proceedings, apply to a People's Court for measures to order discontinuation of the infringement and to preserve property.

When dealing with the application specified in the preceding paragraph, the People's Court shall apply the provisions in Article 93 through Article 96 and Article 99 of the Civil Procedure Law of the People's Republic of China.

Article 50 In order to prevent infringement, a copyright owner or an owner of a right related to the copyright may, before taking legal proceedings, apply to a People's Court for preserving evidence, where the evidence is likely to be missing or is difficult to obtain later.

After accepting the application, the People's Court shall make a ruling within 48 hours. Where it rules to adopt preservation measures, it shall have the measures enforced immediately.

The People's Court may order the applicant to provide a guarantee, and shall reject the application where the applicant fails to do so.

Where the applicant fails to take legal proceedings within 15 days from the date the People's Court adopts the preservation measure, the People's Court shall terminate the measure.

Article 51 When trying a case where the copyright or a right related to it is infringed upon, the People's Court may rule to confiscate the unlawful gains, the products of infringement and money and things of value used for illegal activities.

Article 52 A publisher or a producer of reproductions who fails to prove that he is legally authorized publishing or producing of the reproductions, or a distributor of reproductions or a renter of reproductions of a cinematographic work or a work created by a process analogous to cinematography, computer software, sound recording or video recording who fails to prove the legal source of the reproductions that he distributes or rents, shall bear legal liabilities.

Article 53 Any party who fails to perform his contractual obligations, or performs them at variance with the agreed conditions in the contract, shall bear civil liabilities in accordance with the relevant provisions of the General Principles of the Civil Law of the People's Republic of China, the Contract Law of the People's Republic of China and other related laws.

Article 54 Any dispute over copyright may be settled through mediation, it may also be submitted to an arbitration body for arbitration under a written arbitration agreement between the parties or under the arbitration clause in the copyright contract.

Any party may take legal proceedings directly in a People's Court where there is neither a written arbitration agreement between the parties nor an arbitration clause in the contract.

Article 55 Any party that is not satisfied with an administrative penalty, may taking legal proceedings in a People's Court within three months from the date he receives the written decision on the penalty. Where the party neither takes legal proceedings nor implements the decision at the expiration of the time limit, the administrative department for copyright may apply to the People's Court for enforcement.

## Chapter VI Supplementary Provisions

Article 56 The term zhuzuoquan (copyright) as used in this Law means banquan commonly used in the country.

Article 57 The term publish as used in Article 2 of this Law means reproducing and distributing of a work.

Article 58 Measures for the protection of computer software and of the right of communication through information network shall be formulated separately by the State Council.

Article 59 The rights of copyright owners, publishers, performers, producers of sound recordings and video recordings, radio stations and television stations, as provided for in this Law, shall, if the term of their protection specified in this Law has not yet expired on the date this Law goes into effect, be protected in accordance with this Law.

Any act of tort or breach of contract committed prior to the date this Law goes into effect shall be dealt with in accordance with the relevant regulations or policies in force at the time when such act was committed.

Article 60 This Law shall go into effect on June 1, 1991.

## **Guaranty Law of the People's Republic of China**

Adopted at the 14th Meeting of the Standing Committee of the Eighth National People's Congress on June 30, 1995 and promulgated by Order No. 50 of the President of the People's Republic of China on June 30, 1995

### Contents

#### Chapter I General Provisions

#### Chapter II Suretyship

##### Section 1 Suretyship and Surety

##### Section 2 Suretyship Contract and Modes of Suretyship

##### Section 3 Suretyship Liability

#### Chapter III Mortgage

##### Section 1 Mortgage and Mortgaged Property

##### Section 2 Mortgage Contract and Registration of Mortgaged Property

##### Section 3 Effect of Mortgage

##### Section 4 Enforcement of Mortgage Right

##### Section 5 Mortgage of Maximum Amount

#### Chapter IV Pledge

##### Section 1 Pledge of Movables

##### Section 2 Pledge of Rights

#### Chapter V Lien

#### Chapter VI Deposit

#### Chapter VII Supplementary Provisions

#### Chapter I General Provisions



Article 1 This Law is enacted with a view to promoting the accommodation of funds and the circulation of commodities, ensuring the enforcement of creditor's rights and developing the socialist market economy.

Article 2 If creditors need to have their claims honoured by means of guaranty in such economic activities as loans, purchase and sale of commodities, transportation of goods, and contract for processing materials, they may establish guaranty according to the provisions of this Law.

The modes of guaranty as provided by this Law are suretyship, mortgage, pledge, lien and deposit.

Article 3 In guaranty activities, the principles of equality, voluntariness, fairness, honesty and credibility shall be observed.

Article 4 Where a third party provides a guaranty to creditor for a debtor, the third party may require the debtor to provide him with a counter-guaranty.

The provisions on guaranty in this Law shall apply to the counter-guaranty.

Article 5 A guaranty contract is an ancillary contract of the principal contract. If the principal contract is null and void, the guaranty contract shall be null and void, accordingly. Where it is otherwise agreed in the guaranty contract, such agreement shall prevail.

If a guaranty contract is determined to be null and void, the debtor, the guarantor or the creditor who is in default shall bear civil liability according to their respective fault.

## Chapter II Suretyship

### Section 1 Suretyship and Surety

Article 6 Suretyship as used in this Law means an agreement pursuant to which a surety and a creditor agree that the surety shall perform the obligation or bear the liability according to the agreement, when the debtor fails to perform his obligation.

Article 7 A legal person, other organization or a citizen capable of assuming debts may act as a surety.

Article 8 No State organ may act as a surety, except in the case of securing loans, for onlending, from a foreign government or an international economic organization as is approved by the State Council.

Article 9 Institutions such as schools, kindergartens and hospitals established for purposes of public welfare, and public organizations may not act as a surety.

Article 10 Branches and functioning departments of an enterprise as a legal person may not act as a surety.

If a branch of an enterprise as a legal person has a power of attorney from the legal person, it may provide a suretyship within the scope of authority.

Article 11 No organization or individual may compel a bank or another financial institution or an enterprise to provide a suretyship for another; a bank or another financial institution or an enterprise shall have the right to refuse to provide suretyship for another.

Article 12 Where there are two or more sureties for one obligation, the sureties shall undertake suretyship liability according to their proportion of suretyship agreed in the suretyship contract. In the absence of an agreement on the proportion of suretyship, the sureties shall be jointly and severally liable. The creditor may demand any one of the sureties to undertake all suretyship liability, and every surety shall have the obligation to ensure all of the creditor's rights. The surety who has undertaken the suretyship liability shall have the right of recourse against the debtor, or have the right to demand other sureties who are jointly and severally liable to discharge the proportion of obligations which they should respectively assume.

## Section 2 Suretyship Contract and Modes of Suretyship

Article 13 A surety and a creditor shall conclude a suretyship contract in writing.

Article 14 A surety and a creditor may conclude separate suretyship contracts for a single principal contract, or may reach an agreement to conclude, to the extent of the maximum amount of claim, a single suretyship contract for loan contracts or for certain commodities transaction contracts which successively occur in a given period of time.

Article 15 A suretyship contract shall contain the following particulars:

- (1) the kind and amount of the principal claim guaranteed;
- (2) the time limit for the debtor to perform the obligation;
- (3) the modes of suretyship;
- (4) the scope of the suretyship guaranty;
- (5) the term of the suretyship; and
- (6) other matters the parties deem appropriate.

If a suretyship contract does not contain all the particulars specified in the preceding paragraph, the particulars omitted may be added by amendment.

Article 16 The modes of suretyship include:

- (1) general suretyship;
- (2) suretyship of joint and several liability.

Article 17 A general suretyship refers to a suretyship contract wherein the parties agree that the surety shall undertake suretyship liability in case the debtor defaults.

A general suretyship allows the surety to refuse to undertake suretyship liability towards the creditor before a dispute over the principal contract is tried or arbitrated and the obligations are not enforceable even after the debtor's assets have been seized according to law.

A surety may not exercise the right provided in the preceding paragraph in any of the following circumstances:

- (1) The change of the debtor's domicile makes it extremely difficult for the creditor to have the debtor's obligation enforced;
- (2) A People's Court suspends the enforcement proceedings due to its acceptance of the debtor's bankruptcy case; or
- (3) The surety waives in writing the right provided in the preceding paragraph.

Article 18 A suretyship of joint and several liability refers to a suretyship contract wherein the parties agree that the surety and the debtor shall be jointly and severally liable.

Where the debtor of a suretyship of joint and several liability defaults when the time limit for his performance of the obligation provided in the principal contract expires, the creditor may demand that the debtor perform his obligation, or demand that the surety undertake the suretyship liability within the scope of the suretyship agreement.

Article 19 In the absence of an agreed or explicitly agreed mode of suretyship, the parties shall bear the suretyship liability following the mode of a suretyship of joint and several liability.

Article 20 The surety of a general suretyship or a suretyship of joint and several liability shall enjoy the debtor's right of defense. Where a debtor waives his right of defense against the obligation, the surety shall still enjoy a right of defense.

The right of defense means a debtor's right to exercise his right of claim on legal basis against the creditor when the creditor seeks to enforce his rights.

### Section 3 Suretyship Liability

Article 21 The scope of the suretyship guaranty includes the principal claim and the interest thereof, default fine, compensation for damage and expenses for enforcing the claim, unless the suretyship contract provides otherwise.

In the absence of an agreed or explicitly agreed scope of the suretyship guaranty, the surety shall be liable for payment of all the above costs.

Article 22 If a creditor transfers, in accordance with law, his principal claim to a third party during the period of the suretyship, the surety shall continue to be bound by the suretyship contract within the scope of the original suretyship guaranty, unless the suretyship contract provides otherwise.

Article 23 Where a creditor permits a debtor to transfer his debts to a third party during the period of the suretyship, a consent in writing shall need to be obtained from the surety; the surety shall no longer be liable if the debts are transferred without his prior consent in writing.

Article 24 When a creditor and a debtor agree to alter the principal contract, they shall have to obtain the surety's consent in writing; the surety shall no longer be liable if the contract is altered without his prior consent in writing, unless the suretyship contract provides otherwise.

Article 25 If the surety of a general suretyship and the creditor have no agreement on the term of suretyship, the term of suretyship shall be six months from the date of maturity of the principal debts.

Where the creditor neither files a lawsuit against the debtor nor applies for arbitration during the term of suretyship agreed in the contract or provided in the preceding paragraph, the surety shall be relieved of the suretyship liability; where the creditor has filed a lawsuit or applied for arbitration, the provisions on the interruption of prescription shall apply to the term of suretyship.

Article 26 Where the surety of a suretyship of joint and several liability and the creditor have no agreement on the term of suretyship, the creditor shall, within six months from the date of maturity of the principal debts, have the right to demand that the surety undertake suretyship liability.

If the creditor does not demand that the surety undertake suretyship liability during the term of suretyship agreed in the contract or provided by the preceding paragraph, the surety shall be relieved of the suretyship liability.

Article 27 Where in accordance with the provisions of Article 14 of this Law, a surety provides a suretyship to a creditor's claims which successively occur but there is no agreement on the term of the suretyship, the surety may at any time notify in writing the creditor of termination of the suretyship contract, nevertheless, the surety shall be liable for the creditor's claims which vested before the creditor receives the notice.

Article 28 Where there are both suretyship and property security for the same claim, the surety shall be liable for the creditor's claim unsecured by the property security.

If the creditor waives the property security, the surety shall be relieved of his suretyship liability to the extent of the creditor's waiver.

Article 29 If a branch of an enterprise as a legal person concludes a suretyship contract with a creditor without the written authorization of the enterprise or beyond the scope of the authorization, the suretyship contract shall be null and void or the part of the contract that is beyond the scope of the authorization shall be null and void. If the creditor and the enterprise as a legal person are both at fault, they shall bear their respective civil liabilities commensurate with their own fault; if the creditor is not at fault, the enterprise as a legal person shall be civilly liable.

Article 30 The surety shall not be civilly liable under any of the following circumstances:

(1) the parties to the principal contract conspire to defraud the surety of a suretyship; and

(2) the creditor to the principal contract resorts to deception or coercion to induce or cause the surety to provide a suretyship against its will.

Article 31 The surety, after his assumption of the suretyship liability, shall be entitled to recourse against the debtor.

Article 32 If the creditor does not seek to enforce his claim after a People's Court's acceptance of the debtor's bankruptcy case, the surety may participate in the distribution of the bankruptcy property and exercise his right of recourse in advance.

## Chapter III Mortgage

### Section 1 Mortgage and Mortgaged Property

Article 33 Mortgage as used in this Law means that the debtor or a third party secures the creditor's rights with property listed in Article 34 of this Law without transference of its possession. If the debtor defaults, the creditor shall be entitled to convert the property into money to offset the debts or have priority in satisfying his claim from the proceeds of auction or sale of the property in accordance with the provisions of this Law.

The debtor or the third party specified in the preceding paragraph is the mortgagor, the creditor is the mortgagee, and the property provided as security is the mortgaged property.

Article 34 The following property may be mortgaged:

- (1) houses and other things firmly fixed on the land which are owned by the mortgagor;
- (2) machines, means of transport and other property owned by the mortgagor;
- (3) the land-use right to the State-owned land, State-owned houses and other things firmly fixed on the land which the mortgagor is entitled to dispose of according to law;
- (4) State-owned machines, means of transport and other property which the mortgagor is entitled to dispose of according to law;
- (5) the land-use right to barren hills, barren gullies, barren hillocks, waste flood land and other unreclaimed land contracted by the mortgagor according to law and consent for the mortgage of such right is obtained from the party granting the contract; and
- (6) other property that may be mortgaged according to law.

A mortgagor may at the same time mortgage all the property listed in the preceding paragraph.

Article 35 The amount of a claim secured by a mortgagor shall not exceed the value of his mortgaged property.

If the value of the mortgaged property exceeds that of the claim secured, the surplus may be mortgaged again, but not in excess of the surplus.

Article 36 Where houses on State-owned land acquired in accordance with law are mortgaged, the land-use right to the State-owned land occupied by the houses shall be mortgaged at the same time.

Where the land-use right to State-owned land acquired by means of granting is mortgaged, the houses on the State-owned land shall be mortgaged at the same time.

The land-use right to the land used by a township (town) or village enterprise may not be mortgaged separately. Where factories and other buildings of township (town) or village enterprises are mortgaged, the land-use right to the land occupied by such buildings shall be mortgaged at the same time.

Article 37 The following property may not be mortgaged:

- (1) ownership of the land;
- (2) the land-use right to the land owned by the collectives such as cultivated land, house sites, private plots and private hills, with the exception of those provided in sub-paragraph (5) of Article 34 and sub-paragraph (3) of Article 36 of this Law;
- (3) educational facilities, medical and health facilities of schools, kindergartens, hospitals and other institutions or public organizations established in the interest of the public and other facilities in the service of public welfare;
- (4) property in relation to which the ownership or the right of use is unknown or disputed;
- (5) property sealed up, distrained or placed under surveillance in accordance with law; or
- (6) other property which may not be mortgaged as prescribed by law.

## Section 2 Mortgage Contract and Registration of Mortgaged Property

Article 38 A mortgagor and a mortgagee shall conclude a mortgage contract in writing.

Article 39 A mortgage contract shall include the following particulars:

- (1) the kind and amount of the principal claim secured;
- (2) the term in which the debtor performs his obligation;
- (3) the name, quantity, quality, condition, location, ownership or ownership of the right to the use of the mortgaged property;
- (4) the scope of the guaranty of mortgage; and
- (5) other matters the parties deem necessary to include in the contract.

If a mortgage contract does not include all the particulars specified in the preceding paragraph, the omissions may be added by amendment.

Article 40 In concluding a mortgage contract, the mortgagor and the mortgagee may not stipulate that the ownership of the mortgaged property shall be transferred to the creditor in case the mortgagee's claim is not satisfied after maturity of the debt.

Article 41 Where a party mortgages property provided for in Article 42 of this Law, he shall register the mortgaged property, and the mortgage contract shall become effective as of the date of registration.

Article 42 The departments responsible for the registration of mortgaged property are as follows:

- (1) the land administration departments which verify and issue certificates evidencing the land-use right if the land-use right to the land to which nothing is firmly attached is mortgaged;
- (2) the departments designated by local people's governments at or above the county level, if urban real estates or factories and other buildings of township (town) or village enterprises are mortgaged;
- (3) the forestry administration departments at or above the county level, if forest trees are mortgaged;
- (4) the registration departments for means of transport, if aircraft, ships and vehicles are mortgaged; or
- (5) the administrative departments of industry and commerce in the place where the property is located, if the equipment and other movables of enterprises are mortgaged.

Article 43 Where a party mortgages other property, he may, of his own will, register the mortgaged property, and the mortgage contract shall become effective as of the date of execution.

If a party does not register the mortgaged property, he may not defend against the claims of third party. If a party intends to register the mortgaged property, the notary department in the place where the mortgagor resides shall be the registration department.

Article 44 To register the mortgaged property, a party shall submit to the registration department the following documents or their duplicates:

- (1) the principal contract and the mortgage contract; and
- (2) the certificates evidencing the ownership of or the use right to the mortgaged property.

Article 45 Consulting, transcribing or duplicating the materials registered with the registration departments shall be permitted.

### Section 3 Effect of Mortgage

Article 46 The scope of guaranty of mortgage includes the principal debt and the interest thereof, default fine, compensation for damage and expenses for enforcing the mortgage, unless otherwise provided in the mortgage contract.

Article 47 If the mortgaged property is seized by a People's Court because of the debtor's failure to perform his obligation prior to the maturity of the debt, the mortgagee shall, from the date of seizure, be entitled to collect the natural fruits severed from the mortgaged property and the legal fruits which the mortgagor may collect from the mortgaged property. If the mortgagee fails to notify the person who has the obligation to pay legal fruits of the fact that the mortgaged property is seized, the mortgagee's right shall not extend to such fruits.

The fruits provided for in the preceding paragraph shall first be used to offset the expenses for collecting the fruits.

Article 48 If a mortgagor mortgages leased property, he shall notify the lessee of the fact in writing, and the original contract of lease continues in effect.

Article 49 If a mortgagor transfers mortgaged property already registered during the period of mortgage, he shall notify the mortgagee and inform the transferee that the transferred property is mortgaged; if the mortgagor fails to notify the mortgagee or inform the transferee of the fact, the transfer shall be null and void.

If the proceeds expected from the transfer of the mortgaged property are evidently less than its value, the mortgagee may demand that the mortgagor provide an additional guaranty; if the mortgagor fails to provide the additional guaranty, then he may not transfer the mortgaged property.

The proceeds which the mortgagor obtains from the transfer of the mortgaged property shall first be used to liquidate the claim secured by the mortgage or it shall be deposited with a third party agreed upon by the mortgagor and the mortgagee. If the proceeds exceed the claim, the balance shall belong to the mortgagor; if the proceeds do not cover the claim, the difference shall be paid by the debtor.

Article 50 The right of mortgage may not be separated from the creditor's rights and transferred singly, nor used to secure other creditors' rights.

Article 51 Where a mortgagor's acts are likely to cause the value of the mortgaged property to decline, the mortgagee shall be entitled to demand that the mortgagor cease and desist from such acts. Where the value of the mortgaged property has declined, the mortgagee shall be entitled to demand that the mortgagor restore the original value of the mortgaged property or provide security corresponding to the amount of the lost value.

If the mortgagor is not responsible for the decline in the value of the mortgaged property, the mortgagee may only demand that the mortgagor provide security to cover the loss resulting from the decline in value. The part of the mortgaged property whose value has not declined shall continue to serve as guaranty for the creditor's right.

Article 52 The right of mortgage shall co-exist with the creditor's right secured. If the creditor's right lapses, the right of mortgage shall also lapse.

#### Section 4 Enforcement of Right of Mortgage



Article 53 The mortgagee, who is not paid at the maturity of the obligation, may, through agreement with the mortgagor, be paid out of the proceeds from the conversion of the mortgaged property or from the auction or sale of the mortgaged property; if they fail to reach an agreement, the mortgagee may bring a lawsuit in a People's Court.

If the proceeds from the conversion of the mortgaged property or the proceeds from the auction or sale thereof exceed the claim, the balance shall be returned to the mortgagor; if the proceeds do not cover the claim, the difference shall be paid by the debtor.

Article 54 Where the same property is mortgaged to two or more creditors, the proceeds from the auction or sale of the mortgaged property shall be used for liquidation according to the following provisions:

(1) Where a mortgage contract takes effect with its registration, the liquidation shall be made in the order of the time of registration of the mortgaged property; if the registration is in the same order, the liquidation shall be made according to the respective proportions of the claims;

(2) Where a mortgage contract takes effect on the date of its execution and the mortgaged property is registered, the liquidation shall be made according to the provisions of sub-paragraph (1) of this Article; if the mortgaged property is not registered, the liquidation shall be made in the order of the effective dates of the contracts; if the order of the effective dates is the same, the liquidation shall be made according to the respective proportions of the claims. The claim secured by registered mortgage shall be satisfied prior to the claim secured by unregistered mortgage.

Article 55 After the execution of a contract in which urban real estate is mortgaged, the newly-built houses on the land shall not be included in the mortgaged property. Where it is necessary to auction the mortgaged real estate, the newly-built houses on the land may be auctioned, according to law, together with the mortgaged property, but the mortgagee shall have no right to enjoy the priority of having his claim satisfied with the proceeds from auction of the newly-built houses.

Where the land-use right to contracted barren hills is mortgaged or the land-use right to the land occupied by the factories and other buildings of a township (town) or village enterprise is mortgaged in accordance with the provisions of this Law, the collective ownership and the uses of the land may not be altered without following the legal procedure after enforcement of the right of mortgage.

Article 56 The mortgagee shall be entitled to the priority of having his claim satisfied with the proceeds from auction of the land-use right to the allocated State-owned land after payment of the granting fees for the land-use right.

Article 57 The third party who provides guaranty of mortgage for the debtor shall have the right of recourse against the debtor after enforcement of the right of mortgage by the mortgagee.

Article 58 The right of mortgage shall lapse due to loss or destruction of the mortgaged property. The compensation obtained for the loss or destruction shall be used as the mortgaged property.

Section 5 Mortgage of Maximum Amount

Article 59 A mortgage of maximum amount as used in this Law means that the mortgaged property shall be used to secure the creditor's claims which occur successively during a given period of time and to the extent of the total amount of the claims, as agreed upon between a mortgagor and a mortgagee.

Article 60 A loan contract may be accompanied by a contract of mortgage of maximum amount.

The contract executed by a creditor and a debtor for the continuous transaction of a specific commodity in a given period of time may be accompanied by a contract of mortgage of maximum amount.

Article 61 The creditor's right to the principal contract secured by a mortgage of maximum amount may not be transferred.

Article 62 The provisions of this section plus other provisions of this Chapter shall apply to mortgage of maximum amount.

## Chapter IV Pledge

### Section 1 Pledge of Movables

Article 63 Pledge of movables as used in this Law means that the debtor or a third party transfers the possession of his movables to the creditor as a security for debt. If the debtor defaults, the creditor shall, in accordance with the provisions of this Law, be entitled to convert the property into money as payment of the debt or enjoy priority of having his claim satisfied with the proceeds of auction or sale of the pledged property.

The debtor or the third party mentioned in the preceding paragraph shall be the pledgor, the creditor shall be the pledgee, and the movables transferred shall be the pledged property.

Article 64 A pledgor and a pledgee shall conclude a pledge contract in writing.

A pledge contract shall become effective upon the delivery of the pledged property to the possession of the pledgee.

Article 65 A pledge contract shall include the following particulars:

- (1) the kind and amount of the principal debt secured;
- (2) the time limit for the debtor to perform his obligation;
- (3) the name, quantity, quality and condition of the pledged property;
- (4) the scope of the guaranty of pledge;
- (5) the time for delivering the pledged property; and

(6) other matters the parties deem necessary to include in the contract.

If a pledge contract does not contain all the particulars specified in the preceding paragraph, the omissions may be added by amendment.

Article 66 A pledgor and a pledgee may not stipulate in the contract that ownership of the pledged property shall be transferred to the pledgee if the obligation is not discharged at its maturity.

Article 67 The scope of guaranty of pledge includes the principal claim and the interest thereof, default fine, the compensation for damage, the storage charges and the cost of enforcing the right of the pledge. If otherwise provided for in the pledge contract, the provisions there shall apply.

Article 68 The pledgee shall be entitled to collect the fruits derived from the pledged property. If otherwise provided for in the pledge contract, the provisions there shall apply.

The fruits mentioned in the preceding paragraph shall first be used to pay the expenses for collecting the fruits.

Article 69 The pledgee shall have the obligation to maintain the pledged property in good condition. The pledgee shall be civilly liable for the loss or destruction of or damage to the pledged property resulting from his negligence in storage.

Where the pledgee is unable to maintain the pledged property in good condition and may thus cause loss or destruction of or damage to the pledged property, the pledgor may demand that the pledgee have the pledged property deposited, or demand that his obligation be discharged in advance and the pledged property returned.

Article 70 Where there is a possibility for the pledged property to perish or for its value to obviously decline to a point sufficient to impair the rights of the pledgee, the pledgee may demand that the pledgor provide additional security in like amount. If the pledgor refuses to provide the additional security, the pledgee may auction or sell the pledged property, and conclude an agreement with the pledgor that the proceeds from the auction or sale shall be used to pay in advance the debt secured or be deposited with a third party as agreed upon with the pledgor.

Article 71 Where the debtor performs his obligation at its maturity, or where the pledgor pays, prior to maturity, the debt secured, the pledgee shall return the pledged property.

If the pledgee is not paid at the maturity of the obligation, he may conclude an agreement with the pledgor that the pledged property be converted into money in order to pay the debt, or he may auction or sell the said property according to law.

Where the money converted from the pledged property or the proceeds from auction or sale exceed the debt secured, the balance shall be paid to the pledgor. Where the money or the proceeds do not cover the whole debt secured, the difference shall be paid by the debtor.

Article 72 The third party who secures the obligation of the debtor shall have the right of recourse against the debtor after the pledgee's enforcement of the right of the pledge.

Article 73 The right of pledge shall lapse due to loss or destruction of the pledged property. The compensation obtained for the loss or destruction shall be used as the pledged property.

Article 74 The right of pledge shall co-exist with the creditor's right secured. When the creditor's right lapses, the right of pledge shall also lapse.

## Section 2 Pledge of Rights

Article 75 The following rights may be pledged:

- (1) bills of exchange, cheques, promissory notes, bonds, certificates of deposit, warehouse receipts, bills of lading;
- (2) shares of stocks or certificates of stocks which are transferable according to law;
- (3) the rights to exclusive use of trademarks, the property right among patent rights and copyrights which are transferable according to law; and
- (4) other rights which may be pledged according to law.

Article 76 Where a bill of exchange, cheque, promissory note, bond, certificate of deposit, warehouse receipt or bill of lading is pledged, the document of title shall be delivered to the pledgee within the time limit specified in the pledge contract. The pledge contract shall become effective upon the delivery of the document of title.

Article 77 Where a bill of exchange, cheque, promissory note, bond, certificate of deposit warehouse receipt or bill of lading, which carries the date of payment or the date of delivery of goods, is pledged and if the date of its payment or delivery of goods is prior to the time limit for the performance of the obligation, the pledgee may be paid or accept the delivery of the goods before the expiration of the time limit for the performance of the obligation, and conclude an agreement with the pledgor that the payment or the goods accepted shall be used to pay in advance the debt secured or be deposited with a third party as agreed upon with the pledgor.

Article 78 Where certificates of stock transferable according to law are pledged, the pledgor and the pledgee shall conclude a contract in writing and register the pledge contract with the securities registration authorities. The pledge contract shall become effective on the date of the registration.

The certificates of stocks pledged may not be transferred, unless agreed between the pledgor and the pledgee. The proceeds the pledgor obtained from the transfer of the certificates of stocks shall be used to pay in advance the pledgee's claims secured, or be deposited with a third party as agreed upon with the pledgor.

Where shares of stocks of a limited liability company are pledged, the relevant provisions of the Company Law governing the transfer of shares shall apply. The pledge contract shall become effective on the date on which the pledge of shares is written into the shareholders' name-list.

Article 79 Where the right to exclusive use of trademarks, the property rights among patent rights and copyrights transferable according to law are pledged, the pledgor and the pledgee shall

conclude a contract in writing and register the pledge contract with the administrative department in charge. The pledge contract shall become effective upon registration.

Article 80 If a right mentioned in Article 79 of this Law is pledged, the pledgor may not transfer or permit the right to be used by another, unless agreed between the pledgee and the pledgor. The proceeds from the transfer or the use obtained by the pledgor shall be used to pay in advance the pledgee's claims secured or be deposited with a third party as agreed between the pledgor and the pledgee.

Article 81 The pledge of rights is governed not only by the provisions of this Section, but also by the provisions of Section 1 of this Chapter.

## Chapter V Lien

Article 82 "Lien" as used in this Law means that the creditor shall possess the debtor's movables according to the terms of the contract as provided by Article 84 of this Law. If the debtor defaults on his debt, the creditor shall be entitled to retain the property in accordance with the provisions of this Law and to the priority of having the debt paid with the money converted from the property or proceeds from sale or auction of the property.

Article 83 The scope of guaranty of lien covers the principal claim and the interest thereof, default fine, compensation for damage, cost of preservation of the retained property and expenses for enforcing the lien.

Article 84 In the event of any costs arising from a storage, transportation or processing contract, if the debtor defaults, the creditor shall have the right to retain the property.

The provisions of the preceding paragraph shall be applicable to other contracts whereby the creditor has the right of retention as provided by law.

The parties may specify in the contract the property that may not be retained.

Article 85 Where the retained property can be divided, the value of the part retained shall be equal to the sum of the debt.

Article 86 The lien holder shall have the obligation to maintain the retained property in good condition. The lien holder shall be civilly liable for loss or destruction of or damage to the retained property resulting from his negligence.

Article 87 The creditor and the debtor shall stipulate in the contract that the debtor shall perform his obligation within not less than two months after the creditor takes possession of the debtor's property. If the creditor and the debtor fail to stipulate the same in the contract, the creditor shall, after taking possession of the debtor's property, fix a time limit of two months or more and notify the debtor to perform his obligation within such time limit.

If the debtor defaults within the specified time limit, the creditor may convert the retained property into money upon agreement with the debtor, or may auction or sell the retained property according to law.

Where the money converted from the retained property or the proceeds from auction or sale exceed the debt secured, their balance shall be paid to the debtor; where the money or proceeds do not cover the entire secured debt; the difference shall be paid by the debtor.

Article 88 The right of retention shall lapse due to the following reasons:

- (1) the creditor's right lapses; or
- (2) the debtor gives other security which is accepted by the creditor.

## Chapter VI Deposit

Article 89 The parties may agree that one party shall pay a deposit to the other for the security of a debt. After the debtor performs his obligation, the deposit shall either be retained as partial payment or be returned. If the party paying the deposit defaults, he shall have no right to demand the return of the deposit; if the party accepting the deposit defaults, he shall return twice the amount of the deposit.

Article 90 The deposit shall be executed in written form. The parties shall specify the time limit for the delivery of the deposit in the deposit contract. The deposit contract shall become effective on the date of the actual delivery of the deposit.

Article 91 The amount of the deposit shall be stipulated by the parties, but it shall not exceed 20 percent of the amount of the principal contract.

## Chapter VII Supplementary Provisions

Article 92 The "immovables" as used in this Law means land, and houses, forest, tress and other things firmly fixed on the land.

The "movables" as used in this Law means things other than the immovables.

Article 93 "Suretyship contract", "mortgage contract", "pledge contract" or "deposit contract" as used in this Law may be contract concluded separately in writing that includes the letters and telex in the nature of guaranty between the parties, or the guaranty clauses in the principal contract.

Article 94 Where the mortgaged property, the pledged property or the retained property is converted into money or sold, the price shall be fixed with reference to the market price.

Article 95 Where the Maritime Code and other laws have special provisions on guaranty, such provisions shall apply.

Article 96 This Law shall be implemented as of October 1, 1995.

## **Law of the People's Republic of China on Securities**

Adopted at the 6th Meeting of the Standing Committee of the Ninth National People's Congress on December 29, 1998; amended in accordance with the Decision of the Standing Committee of the Tenth National People's Congress on Amending the Securities Law of the People's Republic of China adopted at its 11th Meeting on August 28, 2004; and revised by the Standing Committee of the Tenth National People's Congress at its 18th Meeting on October 27, 2005

### Contents

Chapter I General Provisions

Chapter II Issuing of Securities

Chapter III Trading of Securities

Section 1 General Regulations

Section 2 Listing of Securities

Section 3 Continuous Disclosure of Information

Section 4 Prohibited Trading Activities

Chapter IV Acquisition of Listed Companies

Chapter V Stock Exchanges

Chapter VI Securities Companies

Chapter VII Securities Registrar and Clearance Institutions

Chapter VIII Securities Service Institutions

Chapter IX Securities Industry Association

Chapter X Securities Regulatory Authority

Chapter XI Legal Liability

Chapter XII Supplementary Provisions

Chapter I General Provisions



Article 1 This Law is enacted for the purpose of regulating the issuing and trading of securities, protecting the lawful rights and interests of investors, safeguarding the economic order and public interests of the society, and promoting the socialist market economy.

Article 2 Within the territory of the People's Republic of China, this Law is applicable to the issuing and trading of shares, corporate bonds and such other securities as may be so described by the State Council pursuant to law; where not stipulated hereunder, the provisions of the Companies Law of People's Republic of China and other laws and administrative regulations shall govern.

This Law shall be applicable to the listing and trading of government bonds and units of securities investment funds; where otherwise stipulated under other laws or administrative regulations, the provisions thereof shall be applicable.

The regulatory measures for the issuing and trading of the derivative varieties of securities shall be formulated by the State Council in adherence to the principles of this Law.

Article 3 The principles of openness, fairness and justice must be carried out in issuing and trading securities.

Article 4 All parties involved in the issuing and trading of securities shall stand equally in law and shall observe the principles of free will, compensation and honesty and trustworthiness.

Article 5 Securities shall be issued and traded in conformity with laws and administrative regulations. Fraud, insider trading and manipulation of the securities market are prohibited.

Article 6 The operation and administration of the securities industry shall be separated from the operation and administration of the industries of banking, trust and insurance and securities companies shall be established individually and separately from the institutions of banking, trust and insurance businesses, unless otherwise stipulated by the State.

Article 7 The securities regulatory authority under the State Council shall exercise centralized and unified regulation over the securities markets nationwide pursuant to law.

The securities regulatory authority under the State Council may establish local offices according to its needs, which shall perform regulatory functions as authorized.

Article 8 Subject to the centralized and unified regulation of the State over the issuing and trading of securities, an association of the securities industry shall be formed pursuant to law implementing self-regulatory governance.

Article 9 The State audit authority shall exercise auditing supervision over the stock exchanges, securities companies, securities registrar and clearance institutions and securities regulatory authorities pursuant to law.

## Chapter II Issuing of Securities

Article 10 The conditions set forth by laws or administrative regulations must be satisfied in the public issuance of securities, and such issuance must, pursuant to law, be submitted to the securities regulatory authority under the State Council or the departments authorized by the State Council for examination and approval. Without such examination and approval pursuant to law, no entities or individuals shall issue securities publicly.

Any one of the following circumstances shall constitute a public issuance:

- (1) issuing securities to non-specific persons;
- (2) issuing securities to more than 200 specific persons in the aggregate; and
- (3) such other issuing activities as may be so prescribed by laws or administrative regulations.

Where securities are issued in non-public manners, no advertising, public solicitation or any other covert ways in disguised form shall be employed.

Article 11 When an application is made for public issuance of shares or corporate bonds convertible into shares and such issuance shall take place by way of underwriting pursuant to law, or when an application is made for public issuance of other securities which is subject to the sponsorship system as prescribed by laws or administrative regulations, the issuer shall engage the institution with sponsorship qualifications to act as a sponsor. A sponsor shall observe business rules and industrial norms, act with integrity and good faith, discharge its responsibilities diligently and dutifully, scrupulously examine the issuer's application documents and disclosure materials, and supervise and encourage the issuer to operate properly.

The qualifications of sponsors and the regulatory measures governing sponsors shall be formulated by the securities regulatory authority under the State Council.

Article 12 To establish a company limited by shares for public issuance of shares, the conditions set forth by the Companies Law of People's Republic of China and such other conditions as may be so prescribed by the securities regulatory authority under the State Council and so approved by the State Council shall be met, and an application for share offering and the following documents shall be submitted to the securities regulatory authority under the State Council:

- (1) the articles of association of the company;
- (2) the agreement of promoters;
- (3) the personal or business names of the promoters, the numbers of shares subscribed for by the promoters, the types of investment contribution and the verification documents of the investment;
- (4) the prospectus;
- (5) the name and address of the agent bank for the subscription funds; and

(6) the name of underwriting institution and relevant agreements.

Where a sponsor is engaged in accordance with the provisions of this Law, the instrument of sponsorship for issuance produced by such sponsor shall also be furnished.

Where the establishment of a company is subject to approval as required by laws or administrative regulations, the approving document thereof shall also be submitted accordingly.

Article 13 Where a company makes a public issuance of new shares, it shall meet the following conditions:

- (1) having a sound and well-functioning organizational structure;
- (2) having sustainable profitability and being financially sound;
- (3) having had no false entries in its financial and accounting documents for three years immediately preceding the application, and no other major illegal activities attributable to it; and
- (4) such other conditions as may be so prescribed by the securities regulatory authority under the State Council and so approved by the State Council.

Where a listed company is to make a non-public issuance of new shares, it shall meet the conditions as prescribed by the securities regulatory authority under the State Council and so approved by the State Council and it shall submit an application therefor to the securities regulatory authority under the State Council for examination and approval.

Article 14 Where a company is to make a public issuance of new shares, it shall submit an application for share offering and the following documents to the securities regulatory authority under the State Council:

- (1) the business license of the company;
- (2) the articles of association of the company;
- (3) the resolution of the shareholders general assembly;
- (4) the prospectus;
- (5) the financial statements;
- (6) the name and address of the agent bank for subscription funds; and
- (7) the name of underwriting institution and relevant agreements.

Where a sponsor is engaged in accordance with the provisions of this Law, the instrument of sponsorship for issuance produced by such sponsor shall also be furnished.

Article 15 The funds raised from public issuance of shares by a company must be used in conformity with the stated purposes in the prospectus. Any diversion of the purposes of the raised funds stated in the prospectus shall be subject to resolution adopted by the shareholders general assembly. Where a diversion is made in the stated purposes without approval, which is not

rectified or is not reconciled by the shareholders general assembly, the company shall not be permitted to make any subsequent public issuance of new shares.

Article 16 Where a company publicly issues corporate bonds, it shall meet the following conditions:

(1) In the case of a company limited by shares, its net asset value is not less than RMB30 million yuan; in the case of a company with limited liability, its net asset value is not less than 60 million yuan;

(2) The aggregated outstanding balance of the company's corporate bonds does not exceed 40% of its net asset value;

(3) The average distributable profits of the company for each of the three years immediately preceding the application is adequate to pay for one-year interest on its outstanding corporate bonds;

(4) The intended use of the funds raised is in conformity with the industrial policies of the State;

(5) The interest rates of the bonds do not exceed the interest-rate levels set by the State Council; and

(6) Such other conditions as may be so prescribed by the State Council.

The funds raised from public issuance of corporate bonds must be used for the purposes approved, and shall not be used to make up losses or to cover the costs for non-productive purposes.

Where a listed company issues corporate bonds convertible into shares, in addition to the conditions provided for in the first paragraph of this Article, it shall also meet the conditions for the public issuance of shares under this Law, and it shall submit an application to the securities regulatory authority under the State Council for examination and approval.

Article 17 To apply for public issuance of corporate bonds, a company shall submit the following documents to the department authorized by the State Council or the securities regulatory authority under the State Council:

(1) the business license of the company;

(2) the articles of association of the company;

(3) the method for raising funds through issuance of corporate bonds;

(4) the reports of asset valuation and investment verification; and

(5) such other documents as may be so prescribed by the department authorized by the State Council or the securities regulatory authority under the State Council.

Where a company engages a sponsor in accordance with the provisions of this Law, it shall also submit the instrument of sponsorship for issuance produced by such sponsor.

Article 18 Under any one of the following circumstances, no subsequent public issuance of corporate bonds shall be permitted:

- (1) The amount of funds to be raised in the preceding public offering of corporate bonds has not been fully raised;
- (2) There are such situations as defaults or delayed payments of the principal and interest on the publicly-issued corporate bonds or other debts and the situations still exist; and
- (3) The stated purposes of use of the funds raised from public issuance of corporate bonds are diverted in violation of the provisions of this Law.

Article 19 The ways of preparing and presenting the application documentations for issuers applying for examination and approval of securities issuance pursuant to law shall be prescribed by the authorities or departments responsible for such examination and approval pursuant to law.

Article 20 The application documents of securities issuance submitted by an issuer to the securities regulatory authority under the State Council or the department authorized by the State Council must be truthful, accurate and complete.

The securities service institutions and their staff members that certify relevant instruments to endorse securities issuance must strictly perform their statutory duties and guarantee the truthfulness, accuracy and completeness of the instruments so certified.

Article 21 Where an issuer applies for public issuance of shares for the first time, it shall make a preliminary disclosure of the relevant documents pursuant to the rules of the securities regulatory authority under the State Council after submitting its application documents.

Article 22 The securities regulatory authority under the State Council shall establish an issuance examination commission which shall, pursuant to law, examine the applications for share issuance.

The issuance examination commission shall be composed of professionals from the securities regulatory authority under the State Council and specialists engaged from outside, who shall decide by vote on an application for share issuance and offer their opinions after examination.

The specific measures for the formation of the issuance examination commission, the term of office of its members and its operational procedures shall be prescribed by the securities regulatory authority under the State Council.

Article 23 The securities regulatory authority under the State Council shall be in charge of the examination and approval process in respect of the applications for share issuance in accordance with the statutory conditions. The procedures for examination and approval shall be made public and supervised pursuant to law.

The persons involved in the examination and approval process in respect of share issuance applications shall not have any interests to share with the applicants, shall not directly or indirectly accept any gifts from the applicants, shall not hold any shares issued by the applicants whose applications have been examined and approved by them, and shall not have any contact with the applicants in private.

The department authorized by the State Council shall examine and grant the applications for issuance of corporate bonds on the basis of the provisions of the two preceding paragraphs.

Article 24 The securities regulatory authority under the State Council or the department authorized by the State Council shall, within three months from the date of acceptance of application documents for securities issuance, decide in accordance with the statutory conditions and procedures whether to grant or not to grant approval. The time used by an issuer to supplement or to revise the application documents in compliance with the requirements shall not be calculated into the aforementioned three-month period; where it decides not to grant approval, it shall state the reasons.

Article 25 Once an application for securities issuance is approved, the issuer shall, in accordance with the provisions of laws or administrative regulations, release the documents of public offering and solicitation prior to effecting the public issuance of the securities, and place such documents at designated places for public information.

Before the information of a securities issuance is made known to the public pursuant to law, no one who possesses such information shall make public or disclose such information.

No issuer shall issue its securities before the documents of public offering and solicitation are released.

Article 26 Where the securities regulatory authority under the State Council or the department authorized by the State Council finds that the decision it has made on granting approval to the issuance of securities is not in conformity with the statutory conditions or procedures, if the issuance in question has not been effected, it shall revoke the approval and call off the issuance; if the issuance in question has been effected but the listing has not, it shall revoke the decision on approval, and the issuer shall return the proceeds to the holders of the securities at the offering price plus the interest at the equivalent bank deposit rate for the corresponding period; the sponsor shall be jointly and severally liable together with the issuer, unless the former can establish a lack of fault on its part; and the controlling shareholders or the persons in practical control of the issuer at fault shall be jointly and severally liable together with the issuer.

Article 27 After completion of share issuance pursuant to law, any changes in the business and earnings of the issuer shall be taken care of by the issuer itself, whereas the investment risks resulting from such changes shall be borne by the investors themselves.

Article 28 Where an issuer is to issue securities to non-specific persons, which according to laws or administrative regulations should be underwritten by a securities company, the issuer shall enter into an underwriting agreement with the securities company. Securities underwriting business may be conducted on an agency basis or a principal basis.

A securities underwriting on an agency basis refers to such a situation where the underwriting securities company sells the securities for account of the issuer and returns all the unsold securities to the issuer at the end of the underwriting period.

A securities underwriting on a principal basis refers to such a situation where the securities company, according to the underwriting agreement, purchases all of the securities to be offered by the issuer, or purchases all of the unsold securities of the issuer at the end of the underwriting period.

Article 29 An issuer that is to issue securities publicly shall have the right to make its own decision in selecting securities companies for underwriting pursuant to law. Securities companies shall not employ any means of illegitimate competition in soliciting securities underwriting business.

Article 30 To underwrite securities, a securities company shall enter into to an agreement of underwriting on an agency basis or an agreement of underwriting on a principal basis with the issuer, specifying the following matters:

- (1) the names and domiciles of the parties and the names of their legal representatives;
- (2) the types, quantities, amounts of money and offering prices of the securities underwritten on an agency basis and on a principal basis respectively;
- (3) the period of underwriting on an agency basis or a principal basis and the starting and ending dates thereof;
- (4) the methods of payment of subscription money for underwriting on an agency basis or on a principal basis and the dates thereof;
- (5) the fees for underwriting on an agency basis or on a principal basis and the settlement methods thereof;
- (6) the liabilities for breach of agreement; and
- (7) such other matters as may be so prescribed by the securities regulatory authority under the State Council.

Article 31 For underwriting securities, a securities company shall check the offering and solicitation documents for public issuance as to their truthfulness, accuracy and completeness; it shall not carry out any sales activities if it finds any false entries, misleading statements or major omissions therein; and in the event that the sales activities thereof have already begun, such activities must be suspended immediately and remedial measures must be taken accordingly.

Article 32 Where the overall face value of securities to be issued to non-specific persons exceeds 50 million yuan, the underwriting thereof shall be conducted by an underwriting syndicate. An underwriting syndicate shall be composed of the securities companies acting as lead-underwriters and the others as participating underwriters.

Article 33 The longest allowable duration for underwriting securities on an agency basis or on a principal basis shall not exceed 90 days.

During the periods of underwriting on an agency basis or on a principal basis, a securities company shall ensure that the securities so underwritten first go to the subscribers and shall not

pre-allot the securities underwritten on an agency basis to itself, or purchase in advance and retain the securities underwritten on a principal basis itself.

Article 34 Where an issuer offers shares at a premium, the offering price thereof shall be determined through negotiation between the issuer and the securities underwriting companies.

Article 35 Where shares are offered through underwriting on an agency basis, if the shares actually sold to investors are less than 70% of the shares intended to be publicly issued by the end of the underwriting period, the offering shall be deemed a failure. The issuer shall return the proceeds to the subscribers of the shares at the offering price plus interest at the equivalent bank deposit rate for the corresponding period.

Article 36 At the expiration of the period of time for publicly offered shares underwritten on an agency basis or on a principal basis, the issuers shall, within the prescribed time limit, submit a report accounting for the share issuance to the securities regulatory authority under the State Council for the record.

### Chapter III Trading of Securities

#### Section 1 General Regulations

Article 37 Securities purchased and sold pursuant to law by the parties to a securities transaction must be securities issued and delivered pursuant to law.

Securities not issued pursuant to law shall not be purchased and sold.

Article 38 No shares, corporate bonds or other securities issued pursuant to law, restrictive provisions on the periods of transfer of which have been stipulated by law, shall be purchased or sold within such periods.

Article 39 Shares, corporate bonds and other securities publicly issued pursuant to law shall be listed for trading on lawfully established stock exchanges, or transferred at other securities trading sites approved by the State Council.

Article 40 The trading of securities listed on the stock exchanges shall be carried out in an open and centralized manner or in such other manners as may be so approved by the securities regulatory authority under the State Council.

Article 41 Securities purchased and sold by the parties to a securities transaction may take the form of scrip or such other forms as may be so prescribed by the securities regulatory authority under the State Council.

Article 42 Securities shall be traded in spot transaction or such other ways as may be so prescribed by the State Council.



Article 43 The business persons of the stock exchanges, securities companies and securities registrar and clearance institutions, the staff members of the securities regulatory authorities, and other persons prohibited by laws or administrative regulations from participating in share trading shall not, while in office or within the statutory periods of time, hold, purchase or sell any shares directly or under assumed names or names of other persons, nor shall they receive or accept any shares given by others.

At the time of becoming a person as described in the preceding paragraph, one must have his previously held shares transferred pursuant to law.

Article 44 The stock exchanges, securities companies and securities registrar and clearance institutions shall keep their clients' accounts confidential pursuant to law.

Article 45 Securities service institutions and their staff members that produce such documents as auditing reports, asset valuation reports and legal opinions for share issuance shall not purchase or sell such shares during the period of underwriting and within six months thereafter.

In addition to the provisions in the preceding paragraph, securities service institutions and their staff members that produce such documents as auditing reports, asset valuation reports and legal opinions for listed companies shall not purchase or sell the shares concerned from the date of accepting the entrustment of the listed companies until five days after such documents are made known to the public.

Article 46 The fees charged for securities transactions must be reasonable and the items for which fees are charged, the rates of the fees and methods of fee collection must be made known to the public.

The uniformed charging items, standards and measures for securities trading shall be prescribed by the relevant departments in charge under the State Council. Article 47 Where a director, supervisor or senior manager of a listed company, or a shareholder who holds 5% or more of the shares of a listed company sells the shares of the company within six months of purchasing such shares, or repurchases the shares within six months of selling such shares, the gains therefrom, if any, shall belong to the company, and the board of directors of the company shall recover such gains. However, if a securities company comes to hold 5% or more of the shares as a result of absorbing the unsold shares under the terms of an underwriting on a principal basis, it shall not be subject to the restriction of the six-month period when selling such shares.

Where the board of directors of the company fails to take action in accordance with the provisions of the preceding paragraph, the shareholders of the company shall have the right to demand it to act within 30 days. Where the board of directors of the company fails to take action within the said time limit, the shareholders shall have the right to initiate, in their own name, a lawsuit directly in a people's court for the benefit of the company.

Where the board of directors of the company fails to take action in accordance with the provision of the first paragraph, the directors who are accountable thereto shall be held jointly and severally liable pursuant to law.

## Section 2 Listing of Securities

Article 48 To apply for the listing and trading of securities, the applicant shall submit an application to a stock exchange, which shall, pursuant to law, examine and the application before giving consent, both sides shall enter into a listing agreement.

Stock exchanges shall arrange the listing and trading of government bonds according to the decision of the department authorized by the State Council.

Article 49 For applying for the listing and trading of shares, corporate bonds convertible into shares or such other securities which are subject to the sponsorship system as prescribed by laws or administrative regulations, it is necessary to engage the institutions with sponsorship qualifications to act as sponsors thereof.

The provisions of the second and third paragraph of Article 11 of this Law are applicable to sponsors for listing.

Article 50 To apply for the listing of shares, a company limited by shares shall meet the following conditions:

- (1) Its shares have been issued publicly with the approval of the securities regulatory authority under the State Council;
- (2) The total share capital of the company is not less than 30 million yuan;
- (3) Its publicly-offered shares amount to 25% or more of the total shares of the company; where the total share capital of the company exceeds 400 million yuan, the percentage of the publicly-offered shares is 10% or more; and
- (4) The company has not committed any major violations of law and has made no false entries in its financial statements in the three years immediately preceding the application.

Stock exchanges may set higher conditions for listing than the ones provided under the preceding paragraph, and submit them to the securities regulatory authority under the State Council for approval.

Article 51 The State encourages the companies that conform to the industrial policies and meet the conditions for listing to have their shares listed for trading.

Article 52 To apply for the listing and trading of shares, a company shall submit the following documents to a stock exchange:

- (1) the listing submission;
- (2) the resolution of the shareholders general assembly on applying for the listing of shares;
- (3) the articles of association of the company;
- (4) the business license of the company;

- (5) the financial statements of the company covering the three years immediately preceding the application which are audited by an accounting office pursuant to law;
- (6) the legal opinions and instrument of sponsorship for listing;
- (7) the most recent prospectus; and
- (8) such other documents as may be so prescribed in the listing rules of the stock exchange.

Article 53 Once an application for the listing and trading of shares is examined and granted by the stock exchange, the company that has entered into a listing agreement shall, within the specified time limit, release the relevant documents for share listing and place such documents at the designated places for public information. Article 54 In addition to the release of the documents provided under the preceding Article, a company that has entered into a listing agreement shall also make the following matters known to the public:

- (1) the designated commencing date for the shares to be traded on the stock exchange;
- (2) the name list of the top 10 shareholders of the company and their respective shareholdings;
- (3) the persons in practical control of the company; and
- (4) the names of the directors, supervisors and senior managers and their respective holdings of the shares and bonds of the company.

Article 55 Where a listed company is under any one of the following circumstances, the stock exchange shall decide to suspend the listing for trading of its shares:

- (1) It no longer meets the conditions for listing due to the changes in the total share capital, shareholding distribution, etc. of the company;
- (2) It fails to follow the rules to disclose its financial position, or makes false entries in its financial statements, which may mislead investors;
- (3) It has committed major violations of law;
- (5) It has recorded losses for each of the three immediately preceding years; and
- (6) Such other circumstances as may be so prescribed in the listing rules of the stock exchange.

Article 56 Where a listed company is under any one of the following circumstances, the stock exchange shall decide to terminate the listing for trading of its shares:

- (1) It no longer meets the conditions for listing due to the changes in the total share capital, shareholding distribution, etc. of the company and has failed to meet such conditions within the specified time limit set by the stock exchange;
- (2) It fails to follow the rules to disclose its financial position, or makes false entries in its financial statements and refuses to make corrections thereto;

(3) It has recorded losses for each of the three immediately preceding years and has failed to generate profit in the fiscal year thereafter;

(4) It has been dissolved or declared bankrupt; and

(5) Such other circumstances as may be so prescribed in the listing rules of the stock exchange.

Article 57 To apply for the listing and trading of corporate bonds, a company shall meet the following conditions:

(1) The maturity of the corporate bonds is not less than one year;

(2) The actually issued amount of the corporate bonds is not less than 50 million yuan; and

(3) It continues to meet the statutory conditions for issuing corporate bonds at the time of applying for listing.

Article 58 To apply for the listing and trading of corporate bonds, a company shall submit the following documents to a stock exchange:

(1) the listing submission;

(2) the resolution of the board of directors on applying for the listing of corporate bonds;

(3) the articles of association of the company;

(4) the business license of the company;

(5) the method for raising funds through issuance of corporate bonds;

(6) the amount of the corporate bonds actually issued; and

(7) such other documents as may be so prescribed in the listing rules of the stock exchange.

To apply for the listing and trading of corporate bonds convertible into shares, a company shall also furnish an instrument of sponsorship for listing produced by a sponsor.

Article 59 Once an application for the listing and trading of corporate bonds is examined and granted by the stock exchange, the company that has entered into a listing agreement shall, within the specified time limit, release the documents for the listing of corporate bonds and other relevant documents and place its application documents at the designated places for public information.

Article 60 Where a company is under any one of the following circumstances after the listing and trading of its corporate bonds, the stock exchange shall decide to suspend the listing and trading of the company's corporate bonds:

(1) It has committed major violations of law;

(2) It no longer meets the conditions for listing of corporate bonds due to a drastic change in the company's situation;

(3) The funds raised from the issuance of the corporate bonds are not used in accordance with the examined and approved purposes;

(4) It fails to perform its duties in conformity with the method for raising funds through issuance of corporate bonds; and

(5) It has recorded losses for each of the two immediately preceding years.

Article 61 Where a company is under any one of the circumstances specified in Subparagraphs (1) and (4) of the preceding Article and the seriousness of the consequences thereof has been established, or where a company is under any one of the circumstances specified in Subparagraph (2), (3) and (5) of the preceding Article and such circumstances have not been dispelled within the specified time limit, the stock exchange shall decide to terminate the listing and trading of the company's corporate bonds.

Where a company is dissolved or declared bankrupt, the stock exchange shall terminate the listing and trading of the company's corporate bonds.

Article 62 Where a company is not satisfied with the decision made by a stock exchange on denial, suspension or termination of listing, it may apply for reconsideration to the review body established under the stock exchange.

### Section 3 Continuous Disclosure of Information

Article 63 The information disclosed by an issuer or a listed company pursuant to law must be truthful, accurate and complete and shall not contain any false entries, misleading statements or major omissions.

Article 64 Once public issuance of shares pursuant to law is examined and approved by the securities regulatory authority under the State Council, or public issuance of corporate bonds pursuant to laws is examined and approved by the department authorized by the State Council, the prospectus of share offering or the method for raising funds through issuance of corporate bonds shall be released. Where new shares or corporate bonds are to be issued publicly pursuant to laws, the financial statements of the issuer shall also be released.

Article 65 A listed company and a company whose corporate bonds are listed for trading shall, within two months immediately following the end of the first half of each fiscal year, submit to the securities regulatory authority under the State Council and the stock exchange its interim report containing the following contents and release the same:

(1) the financial statements and state of business of the company;

(2) any major litigation involving the company;

(3) any changes in the shares or corporate bonds issued by the company;

(4) any important matters presented for consideration to the shareholders general assembly of the company; and

(5) such other matters as may be so prescribed by the securities regulatory authority under the State Council.

Article 66 A listed company and a company whose corporate bonds are listed for trading shall, within four months immediately following the end of each fiscal year, submit to the securities regulatory authority under the State Council and the stock exchange its annual report containing the following contents and release the same:

- (1) the general situation of the company;
- (2) the financial statements and state of business of the company;
- (3) a brief introduction to the directors, supervisors and senior managers of the company and their respective shareholdings in the company;
- (4) the shares or corporate bonds already issued by the company, including the name list of the top 10 shareholders of the company and their respective shareholdings;
- (5) the persons in practical control of the company; and
- (6) such other matters as may be so prescribed by the securities regulatory authority under the State Council.

Article 67 If a major event occurs that may have a considerable effect on the share trading price of a listed company and such event has not become known to investors, the listed company shall immediately submit a provisional report about the situation of such event to the securities regulatory authority under the State Council and the stock exchange and release the same, explaining the causes, current status and possible legal consequences of such event.

One of the following circumstances shall constitute a major event referred to in the preceding paragraph:

- (1) a major change in the company's business policy or scope of business;
- (2) a decision made by the company concerning a major investment or asset purchase;
- (3) an important contract concluded by the company which may have a significant effect on the assets, liabilities, rights and interests, or business results of the company;
- (4) the incurrence of significant debts by the company, or its default on significant debts at maturity through its breach of contract;
- (5) the incurrence by the company of a major deficit or a major loss;
- (6) a major change in the external conditions relating to the production or business operation of the company;
- (7) replacement of the directors, one-third or more of the supervisors or managers of the company;
- (8) a considerable change relating to the respective shareholdings of the persons who hold 5% or more of the shares of the company, or to the control of the company by the persons in practical control;

- (9) a decision made by the company to reduce its share capital, to merge, to divide, to dissolve or to apply for bankruptcy;
- (10) a major litigation in which the company is involved, or a resolution made by the shareholders general assembly or the board of directors of the company is rescinded or nullified pursuant to law;
- (11) the initiation of an investigation by a judiciary organ on grounds of a suspected crime involving the company, or the imposition of a compulsory measure by a judiciary organ on grounds of a suspected crime involving a director, supervisor or senior manager of the company; and
- (12) such other events as may be so prescribed by the securities regulatory authority under the State Council.

Article 68 The directors and/or senior managers of a listed company shall sign off their written opinions to confirm the periodical reports of the company.

The board of supervisors of a listed company shall review the periodical reports of the company prepared by the boards of directors and provide its written opinions after review.

The directors, supervisors and senior managers of a listed company shall ensure the truthfulness, accuracy and completeness of the information disclosed by the company. Article 69 Where there are false entries, misleading statements or major omissions in the prospectus of share offering, the method for raising funds through issuance of corporate bonds, the financial statements, the listing submission documents, the annual reports, the interim reports, the provisional reports and other materials for information disclosure released by an issuer or a listed company, thus causing losses to investors in securities trading, the issuer or listed company shall be liable for compensation; the directors, supervisors, senior managers and other directly accountable persons of the issuer or listed company as well as the sponsors and securities companies engaged for underwriting shall be jointly and severally liable for compensation together with the issuer or listed company, unless one can establish a lack of fault on one's part; the controlling shareholders or persons in practical control of the issuer or listed company at fault shall be jointly and severally liable for compensation together with the issuer or listed company.

Article 70 The information which must be disclosed pursuant to law shall be released through the media designated by the securities regulatory authority under the State Council, and shall be placed simultaneously at the domicile of the company and stock exchange for public information.

Article 71 The securities regulatory authority under the State Council shall exercise supervision in respect of the annual reports, interim reports, provisional reports of listed companies and the release thereof, in respect of their allocation or placement of new shares, and in respect of the activities of the controlling shareholders of listed companies and the persons who are obligated to disclose information.

Before release which must be made by a company in accordance with laws or administrative regulations, the securities regulatory authorities, stock exchanges, sponsors, securities companies engaged for underwriting and the persons concerned shall not disclose the contents thereof.

Article 72 Where a stock exchange decides to suspend or terminate the listing and trading of a security, it shall make an announcement thereof in a timely manner and report such decision to the securities regulatory authority under the State Council for records.

#### Section 4 Prohibited Trading Activities

Article 73 Persons possessing inside information relating to securities trading and persons obtaining such information unlawfully are prohibited from making use of such inside information in securities trading activities.

Article 74 Persons possessing inside information relating to securities trading include:

- (1) the directors, supervisors and senior managers of an issuer;
- (2) the shareholders holding 5% or more of the shares of a company and the directors, supervisors and senior managers of such shareholders, as well as the persons in practical control of a company and the directors, supervisors and senior managers of such persons;
- (3) a company held by an issuer and the directors, supervisors and senior officers of such company;
- (4) the persons with access to the relevant inside information by virtue of their positions in a company;
- (5) the staff members of the securities regulatory authorities and other persons who perform their statutory administrative duties in respect of the issuance and trading of securities;
- (6) the relevant staff members of the sponsors, securities companies engaged for underwriting, stock exchanges, securities registrar and clearance institutions and securities service institutions; and
- (7) such other persons as may be so prescribed by the securities regulatory authority under the State Council.

Article 75 In the course of securities trading, any unpublished information relating to the business or financial position of a company, or carrying significant effect on the market price of the securities of a company, shall constitute inside information.

All of the following information falls into the category of inside information:

- (1) the major events specified in the second paragraph of Article 67 of this Law;
- (2) a company's plan for profit distribution or capital increase;
- (3) a major change in the share capital structure of a company;
- (4) a major change in the surety for debts of a company;
- (5) any pledge, disposition or retirement of a principal business asset of a company, the value of a single transaction of which exceeds 30 percent of the total value of such asset;



(6) potential liability for major losses to be assumed in accordance with law as a result of the activities of a director, supervisor or senior manager of a company;

(7) the plans relating to the acquisition of a listed company; and

(8) such other important information having an obvious effect on the trading price of securities as may be so defined by the securities regulatory authority under the State Council.

Article 76 Persons possessing inside information relating to securities trading and persons obtaining inside information unlawfully shall not, prior to the publication of such inside information, purchase or sell the securities of the company concerned, or disclose such information, or suggest other persons trade in such securities.

Where, with respect to the acquisition of the shares of a listed company by a natural person, legal person or other organization that holds 5% or more of the shares of the company individually or jointly with others through agreements or other arrangements, there are other provisions under this Law, such other provisions shall govern.

Where insider trading causes losses to investors, the traders shall be held liable for the losses pursuant to law.

Article 77 No one is allowed to manipulate the securities markets in the following ways:

(1) conducting allied or incessant purchasing and selling individually or in conspiracy with another person by building up an ascendancy of funds or shareholdings or taking advantage of information, thus manipulating the price or volume of securities trading;

(2) conducting bidirectional securities transactions in collusion with another person by following previously fixed timing, price and manner, thus affecting the price or volume of securities trading;

(3) conducting securities transactions among the accounts actually controlled by oneself, thus affecting the price or volume of securities trading; and

(4) manipulating the securities markets by other means.

Where manipulation of the securities markets causes losses to investors, the manipulator shall be held liable for compensation pursuant to law.

Article 78 State functionaries and employees and the relevant persons of the media are prohibited from fabricating or disseminating false information so as to disrupt the securities markets.

In the course of securities trading, stock exchanges, securities companies, securities registrar and clearance institutions, securities service institutions and their employees as well as the association of securities industry and the securities regulatory authorities and their staff members are prohibited from making misrepresentation or rendering misleading information.

The media must disseminate information of the securities markets in a truthful and objective manner and are prohibited from misleading the public.

Article 79 Securities companies and their employees are prohibited from conducting any of the following fraudulent activities to the detriment of the interests of clients:

- (1) purchasing and selling securities for clients against their entrustment;
- (2) failing to provide, within the specified period of time, to clients written documents to confirm transactions;
- (3) misappropriating the securities entrusted by clients for trading, or the funds in the accounts of clients;
- (4) purchasing or selling securities for clients without their entrustment, or purchasing and selling securities by making use of the names of clients;
- (5) inveigling clients into pursuing unwarranted securities transactions in order to charge commissions;
- (6) via the media or other means, giving or spreading false information or information that misleads investors; and
- (7) other activities against the clients' expression of their true intention to the detriment of the interests of clients.

Where defrauding of a client causes losses to the client, the wrongdoer shall be held liable for the losses pursuant to law.

Article 80 Legal persons are prohibited from making illegal use of the accounts of other persons' to conduct securities transactions, and are prohibited from lending the securities accounts of their own or other persons'.

Article 81 The channels for funds to flow into the markets shall be broadened pursuant to law, and funds are prohibited from flowing into the stock markets unlawfully.

Article 82 No one is allowed to misappropriate public funds for securities trading.

Article 83 Where enterprises owned by the State or controlled by State assets purchase and sell the shares listed for trading, they must observe the relevant provisions of the State.

Article 84 Where stock exchanges, securities companies, securities registrar and clearance institutions, securities service institutions and their employees find any prohibited trading activities in securities trading, they shall report such activities to the securities regulatory authorities without delay.

## Chapter IV Acquisition of Listed Companies

Article 85 An investor may acquire a listed company through a tender offer, a negotiated acquisition, or other lawful means.

Article 86 When, through securities trading on a stock exchange, the shareholding of an investor, or the deemed joint-shareholding of an investor and others in virtue of agreements or other arrangements, has reached 5% of the issued shares of a listed company, the investor shall, within three days from the date on which such shareholding becomes a fact, report in writing to the securities regulatory authority under the State Council and the stock exchange, inform the said listed company of the fact and make an announcement thereof. The investor shall not continue to purchase or sell the share of the said listed company during the period of time mentioned above.

When the shareholding of an investor, or the deemed joint-shareholding of an investor and others in virtue of agreements or other arrangements, has reached 5% of the issued shares of a listed company, every 5% increase or decrease in such shareholdings thereafter shall be reported and announced in accordance with the provisions of the preceding paragraph. During the period of report and within two days after the report and announcement, the investor shall not further purchase or sell the shares of the listed company.

Article 87 The written report and announcement made in accordance with the provisions in the preceding Article shall include the following contents:

- (1) the names and domiciles of the shareholders;
- (2) the description and quantity of the shares held; and
- (3) the date on which shareholding or the increase or decrease in shareholdings has reached the statutory percentage.

Article 88 Where through securities trading on a stock exchange, the shareholding of an investor, or the deemed joint-shareholding of an investor and others in virtue of agreements or other arrangements, has reached 30% of the issued shares of a listed company, if further acquisition is to be pursued, a tender offer of acquisition shall be launched pursuant to law to all of the shareholders of the listed company for acquiring all or part of the shares of the listed company.

In the tender offer for acquiring part of the shares of a listed company shall be stated that in case the number of the shares committed to sell by the shareholders of the company to be acquired exceeds the number of the shares proposed to acquire, the acquirer shall proceed on a prorating basis.

Article 89 In order to launch a tender offer of acquisition in accordance with the provisions in the preceding Article, the acquirer must submit a report on acquisition of the listed company in advance to the securities regulatory authority under the State Council clearly stating the following items:

- (1) the name and domicile of the acquirer;
- (2) the decision of the acquirer concerning the acquisition;
- (3) the name of the listed company intended to acquire;

- (4) the purposes of the acquisition;
- (5) the detailed description of the shares under acquisition and the number of the shares proposed to acquire;
- (6) the period and price of the acquisition;
- (7) the funds needed for the acquisition and the assurance thereof; and
- (8) the shareholding percentage of the acquirer in the total shares of the company to be acquired at the time of submitting the report on acquisition of the listed company.

The acquirer shall simultaneously submit the report on acquisition of the listed company to the stock exchange.

Article 90 After 15 days from the date of submitting its report on acquisition of a listed company in accordance with the provision in the preceding Article, the acquirer shall announce its tender offer of acquisition. During the period of time mentioned above, if the securities regulatory authority under the State Council finds that the said report is not in conformity with the provisions of laws or administrative regulations, it shall, in a timely manner, inform the acquirer of the fact, and the acquirer shall not announce its tender offer of acquisition.

The period of acquisition stated in a tender offer of acquisition shall be not less than 30 days but not more than 60 days.

Article 91 An acquirer shall not rescind its acquisition offer within the committed period of time stated in the tender offer of acquisition. In case the acquirer deems it necessary to modify the terms of its acquisition offer, it must submit a report in advance to the securities regulatory authority under the State Council and the stock exchange, and make the announcement thereof upon approval.

Article 92 All the terms stated in a tender offer of acquisition shall be equally applicable to all the shareholders of the company to be acquired.

Article 93 Where a tender offer of acquisition is pursued, the acquirer shall not, within the period of acquisition, sell the shares of the company to be acquired, or purchase the shares of the said company in a manner other than the one as stipulated in the tender offer of acquisition, or on terms more favorable than the ones as stipulated in such offer. Article 94 Where negotiated acquisition is pursued, the acquirer and the shareholders of the company to be acquired may effect an assignment of shares through negotiation in accordance with the provisions of laws or administrative regulations.

When acquiring a listed company by way of negotiation, the acquirer shall, within three days upon reaching an agreement, submit a written report to the securities regulatory authority under the State Council and the stock exchange, and make an announcement thereof.

An acquisition agreement shall not be executed prior to its announcement.

Article 95 Where negotiated acquisition is pursued, the parties to the agreement may provisionally entrust a securities registrar and clearance institution with the safekeeping of the shares to be assigned under the agreement and deposit the funds for acquisition with the designated banks.

Article 96 Where negotiated acquisition is pursued, when the shareholding of an acquirer, or the deemed joint-shareholding of an acquirer and others in virtue of agreements or other arrangements, has reached 30% of the issued shares of a listed company and the acquirer intends to pursue further acquisition, a tender offer of acquisition shall be launched to all of the shareholders of the listed company for acquiring all or part of the shares of the company, except where exempted by the securities regulatory authority under the State Council from launching a tender offer of acquisition.

When acquiring the shares of listed company by way of a tender offer in accordance with the provisions in the preceding paragraph, the acquirer shall observe the provisions of Articles 89 through 93 of this Law.

Article 97 Where at the expiration of the period of acquisition, the spread of share ownership of the acquired company is no longer in conformity with the conditions for listing, the stock exchange shall, pursuant to law, terminate the listing and trading of the shares of the listed company; and the remaining holders of the shares of the acquired company shall have the right to sell their shares to the acquirer on the same terms as stipulated in the tender offer of acquisition, and the acquirer shall acquire such shares accordingly.

Where, after completion of the acquisition, the acquired company no longer possesses the qualifications of a company limited by shares, it shall be transformed into another form of enterprise pursuant to law.

Article 98 The shares of an acquired listed company held by the acquirer in the course of acquisition of a listed company shall not be assigned within 12 months after completion of the acquisition.

Article 99 Where, after completion of the acquisition, the acquired company is to be merged into the acquirer and is therefore to be dissolved, the original shares of the dissolved company shall be replaced by the acquirer pursuant to law.

Article 100 An acquirer shall, within 15 days after completion of the acquisition, submit a report on the acquisition to the securities regulatory authority under the State Council and the stock exchange, and make an announcement thereof.

Article 101 With respect to acquisition of the shares of listed companies which are held by the investment institutions authorized by the State, such acquisition shall be pursued in accordance with the provisions of the State and shall be subject to approval by the relevant department in charge.

The securities regulatory authority under the State Council shall formulate specific measures for acquisition of listed companies in accordance with the principles of this Law.

## Chapter V Stock Exchanges

Article 102 A stock exchange is a legal person performing self-regulatory governance which provides the premises and facilities for centralized trading of securities, organizes and supervises such securities trading.

The establishment and dissolution of a stock exchange shall be subject to decision by the State Council.

Article 103 The articles of association must be formulated where a stock exchange is established.

The formulation and modification of the articles of association of a stock exchange shall be subject to approval by the securities regulatory authority under the State Council.

Article 104 The words “stock exchange” shall be included in the name of a stock exchange. No other units or individuals shall use “stock exchange” or similar words in their names.

Article 105 A stock exchange may allocate fee-generated revenues at its discretion, and such revenues shall first be used to ensure the regular operation and gradual improvement of the premises and facilities of the stock exchange.

The accumulated property of a stock exchange applying a membership system shall belong to the members and the rights and interests embodied in such property shall be jointly enjoyed by the members. Such property shall not be distributed to the members so long as the stock exchange exists.

Article 106 A stock exchange shall have a board of governors.

Article 107 A stock exchange shall have a general manager, to be appointed and removed by the securities regulatory authority under the State Council.

Article 108 A person who is in one of the following circumstances or the circumstances as described in Article 147 of the Companies Law of the People’s Republic of China shall not be appointed a person in charge of a stock exchange:

(1) being a person in charge of a stock exchange or securities registrar and clearance institution or a director, supervisor or senior manager of a securities company who has been removed from office due to violations of law or rules of discipline, and a five-year period has not elapsed ever since; and

(2) being a lawyer, certified public accountant or a professional of an investment consultancy institution, financial advisory institution, credit rating institution, asset appraisal institution or verification institution who has been disqualified as such due to violations of law or rules of discipline, and a five-year period has not elapsed ever since.

Article 109 An employee of a stock exchange, securities registrar and clearance institution, securities service institution or securities company or a staff member of a State organ who has been

expelled due to violations of law or rules of discipline shall not be recruited as an employee of a stock exchange.

Article 110 A person who enters a stock exchange for centralized trading of securities must be a member of the stock exchange.

Article 111 In order to trade securities, an investor shall enter into an entrustment agreement of securities trading with a securities company and open a securities trading account with the company, and entrust the company with the purchasing and selling of securities on his behalf in writing, through telephone or by other means.

Article 112 Upon entrustment by an investor, a securities company shall, in accordance with the rules of securities trading, put forward a transaction order and participate in the centralized floor trading at the stock exchange and shall bear the liabilities of clearance and settlement corresponding to the transaction completed; on the basis of the completed transaction and in accordance with the rules of clearance and settlement, the securities registrar and clearance institution shall process the clearance and settlement of securities and funds with the securities company and effect the procedure of securities registration and transfer for the client of the securities company.

Article 113 The stock exchanges shall ensure fairness of the centralized trading of securities, make available the real-time quotations and prices of securities trading, and formulate and publish the daily charts thereof.

No entities or individuals shall publish the real-time quotations and prices of securities trading without permission of the stock exchanges.

Article 114 In the event of an unexpected incident that prevents securities trading from operating regularly, the stock exchanges may take the measure of a technical halt on the markets; in the event of an unexpected incident which occurs due to force majeure, or for the purposes of maintaining the regular order of securities trading, the stock exchanges may decide to suspend the markets.

When stock exchanges take the measure of technical halt or decide to suspend the markets; they must report to the securities regulatory authority under the State Council in a timely manner.

Article 115 Stock exchanges shall excise real-time monitoring of securities trading and submit reports on suspicious trading situations in accordance with the requirements of the securities regulatory authority under the State Council.

Stock exchanges shall oversee the information disclosure by listed companies and by persons obligated to make such disclosure, and urge them to disclose information in a timely and accurate manner in accordance with law.

Where securities accounts display significantly suspicious trading situations, the stock exchange may, if necessary, impose restrictions on trading by such accounts and shall report such restrictions to the securities regulatory authority under the State Council for the record.

Article 116 A stock exchange shall allocate certain proportions of its revenues from transaction fees, membership dues and access fees to set up risk funds. The risk funds shall be administered by the board of governors of the stock exchange.

The specific proportion for allocation and the measures for use of the risk funds shall be prescribed by the securities regulatory authority under the State Council in conjunction with the finance department of the State Council.

Article 117 Stock exchanges shall deposit the collected and accumulated risk funds into the designated accounts at their current transaction banks, and shall not make use of the funds without authorization.

Article 118 Stock exchanges shall, in accordance with laws or administrative regulations, formulate rules for listing, trading, membership administration and other relevant rules and submit such rules to the securities regulatory authority under the State Council for approval.

Article 119 In performing his duties related to securities trading, the person in charge or the employee of a stock exchange shall recuse himself where he himself or one of his relatives is an interested party.

Article 120 Where trade is conducted in accordance with the trading rules formulated in accordance with law, the transaction results thereof shall not be altered. The civil liabilities to be borne by the persons who violate the rules in the course of trading shall not be exempted; and the gains obtained from trading in violation of the rules shall be dealt with according to relevant provisions.

Article 121 The persons conducting securities transactions inside stock exchanges who violate the relevant trading rules of the stock exchanges shall be imposed on disciplinary sanctions by the stock exchanges; if the circumstances are serious, they shall be deprived of their qualifications and banned from entering the floor for securities trading.

## Chapter VI Securities Companies

Article 122 The establishment of a securities company shall be subject to examination and approval by the securities regulatory authority under the State Council. No entities or individuals shall engage in securities business without approval by the securities regulatory authority under the State Council.

Article 123 A securities company referred to under this Law means a company with limited liability or a company limited by shares established in accordance with the provisions of the Companies Law of the People's Republic of China to engage in securities business.

Article 124 The following conditions shall be met for the establishment of a securities company:



- (1) It has the articles of association which are in conformity with the provisions of laws or administrative regulations;
- (2) Its major shareholders possess sustainable profitability and enduring trustworthiness and have no record of major illegal activities for the three immediately preceding years, and the net assets of each of them are not less than 200 million yuan;
- (3) Its registered capital is in conformity with the provisions of this Law;
- (4) Its directors, supervisors and senior managers possess the requisite qualifications for those posts, and its employees possess the requisite qualifications for securities business;
- (5) It has sufficient risk management and internal control mechanism;
- (6) It has up-to-standard operating premises and business facilities; and
- (7) Such other conditions as may be so stipulated by laws or administrative regulations or by the securities regulatory authority under the State Council and so approved by the State Council.

Article 125 Subject to approval by the securities regulatory authority under the State Council, a securities company may engage in all or part of the following businesses:

- (1) securities brokerage;
- (2) securities investment consultancy;
- (3) financial advising relating to securities trading or investment ;
- (4) securities underwriting and sponsorship;
- (5) proprietary account transactions;
- (6) securities asset management; and
- (7) other securities businesses.

Article 126 A securities company must have the words “securities company with limited liability” or “securities company limited by shares” included in its name. Article 127 A securities company that engages in one or all of the businesses specified in Subparagraphs (1) through (3) of Article 125 of this Law, its registered capital shall be 50 million yuan at the minimum; if it engages in one of the businesses specified in Subparagraphs (4) through (7), its registered capital shall be 100 million yuan at the minimum; and if it engages in two or more of the businesses specified in Subparagraphs (4) through (7), its registered capital shall be 500 million yuan at the minimum. The registered capital of a securities company is the actual paid-in capital.

The securities regulatory authority under the State Council may adjust the minimum amount of the registered capital on the basis of the principle of prudent regulation and the varying degrees of risk of the different securities businesses, but not less than the limits as provided for under the preceding paragraph.

Article 128 The securities regulatory authority under the State Council shall, within six months from the date it accepts an application for establishment of a securities company, examine the application in compliance with the statutory conditions and procedures and on the basis of the principle of prudent regulation, make a decision on whether to grant or not to grant the application, and notify the applicant of the decision. Where an application is not granted, the reasons therefor shall be given.

After obtaining approval for establishment of a securities company, the applicant shall, within the specified time limit, submit an application to the company registration authority for registration and business license.

A securities company shall, within 15 days from the date it receives its business license, apply to the securities regulatory authority under the State Council for a securities business permit. The securities company shall not commence its securities business without obtaining a securities business permit.

Article 129 To establish, acquire or close a branch office, to alter its business scope or registered capital, to replace the shareholders who hold 5% or more interests therein or the persons in practical control thereof, to modify a key clause in the articles of association of the company, to merge, divide, change the form of the company, to suspend business, to dissolve or go bankrupt, a securities company must obtain approval of the securities regulatory authority under the State Council.

To establish, acquire or participate in a securities business institution abroad, a securities company must apply to the securities regulatory authority under the State Council for approval. Article 130 The securities regulatory authority under the State Council shall set the norms for risk control of securities companies with respect to the net capital, the ratio of net capital to debt, the ratio of net capital to net assets, the ratio of net capital to the business scales of proprietary account transactions, underwriting and asset management, the ratio of liabilities to net assets, the ratio of current assets to current liabilities, etc.

A securities company shall not provide finance or guarantee to its shareholders or the parties related to the shareholders.

Article 131 Directors, supervisors and senior managers of a securities company shall be persons of integrity and honesty and be of good conduct, being well-versed in laws and administrative regulations governing securities, possessing the abilities of business operation and management needed for performing their duties and, before taking office, having acquired the post qualifications approved by the securities regulatory authority under the State Council.

A person who is in one the following circumstances or the circumstances as prescribed in Article 147 of the Companies Law of the People's Republic of China shall not be appointed to the position of director, supervisor or senior manager of a securities company:

(1) being a person in charge of a stock exchange or securities registrar and clearance institution or a director, supervisor or senior manager of a securities company who has been removed from office

due to violations of law or rules of discipline, and a five-year period has not elapsed ever since; and

(2) being a lawyer, certified public accountant or a professional of an investment consultancy institution, financial advisory institution, credit rating institution, asset appraisal institution or verification institution who has been disqualified as such due to violations of law or rules of discipline, and a five-year period has not elapsed ever since.

Article 132 An employee of a stock exchange, securities registrar and clearance institution, securities service institution or securities company or a staff member of a State organ who has been expelled due to violations of law or rules of discipline shall not be recruited as an employee of a securities company.

Article 133 Staff members of State organs and other persons who are prohibited by laws or administrative regulations from holding concurrent positions in companies shall not concurrently hold any posts in any securities companies.

Article 134 The State maintains a fund for protection of securities investors. The fund for protection of securities investors shall be composed of the funds contributed by securities companies and other funds so raised pursuant to law. The specific measures for raising, control and use of the fund shall be formulated by the State Council.

Article 135 A securities company shall allocate reserve funds against trading risks from its annual after-tax profits, which shall be used for making up the losses in securities trading. The specific proportion of the allocation thereof shall be prescribed by the securities regulatory authority under the State Council.

Article 136 A securities company shall maintain a comprehensive system of internal control and adopt effective partitioning measures against conflict of interests between the company and clients and among different clients.

A securities company shall conduct brokerage, underwriting, proprietary account transaction and securities asset management separately and shall not mix them up in operation.

Article 137 A securities company must conduct its proprietary account transactions in its own name and shall not make use of the name of another entity or the name of a natural person.

A securities company must use its self-owned funds or lawfully raised funds to conduct proprietary account transactions.

A securities company shall not let others use its accounts for proprietary account transactions.

Article 138 A securities company enjoys the right of business autonomy under the law and its legitimate business operation shall be subject to no interference.

Article 139 The funds for trade settlement of the clients of securities companies shall be deposited with commercial banks, and an individual account shall be opened in the name of each client for management of such funds. The specific measures and implementation thereof shall be formulated by the State Council.

Securities companies shall not calculate or include their clients' funds for trade settlement and their clients' securities as part of their own assets. No entity or individual shall misappropriate in any manner their clients' funds for trade settlement and their clients' securities. In case of bankruptcy or winding-up of a securities company, the clients' funds for trade settlement and the clients' securities shall not belong to the bankruptcy property or property for liquidation. The clients' funds for trade settlement and their securities shall not be sealed up, frozen, withheld or alienated, or subjected to compulsory enforcement, except for the purposes of satisfying the debts of the clients themselves or under such other circumstances as provided for by law.

Article 140 To conduct brokerage business, a securities company shall make available at its premises the uniformly printed forms of entrustment for the entrusting parties to purchase or sell securities. Where other ways of entrustment are adopted, such entrustment must be recorded.

With respect to clients' entrustment for purchasing or selling securities, no matter whether a transaction is completed, the records of entrustment shall be kept at the securities company for the period of time as specified.

Article 141 Upon accepting the entrustment for purchasing or selling securities, a securities company shall, following the rules for trading, process the securities transactions as an agent according to the specifications, quantities, bid-ask manners, price ranges of the securities, etc. as clearly indicated in the forms of entrustment, and shall record the transactions accordingly. Upon completion of the transactions, the securities company shall produce the confirmation reports of transactions in accordance with relevant rules and deliver the same to the clients.

The corresponding slips confirming the activities and results of securities transactions must be true and authentic and reviewed and verified one by one by persons other than the ones processing the transactions so as to ensure correspondence between the balance of the securities on the book and the securities actually held. .

Article 142 The services provided by a securities company to its clients in terms of funds or securities for securities trading must be in conformity with the provisions of the State Council and approved by the securities regulatory authority under the State Council.

Article 143 When conducting brokerage business, a securities company shall not accept the entrustment of discretionary power by a client to decide on the timings, types, quantities and prices of securities transactions.

Article 144 A securities company shall not undertake in any manner to secure gains or make up losses to its clients of securities trading.

Article 145 A securities company and its employees shall not in private accept clients' entrustment to purchase or sell securities circumventing the legally established business premises of the company.

Article 146 Where in the course of securities trading, an employee of a securities company follows the instructions of the company, or violates the trading rules by making use of his position, the company shall be fully responsible for the consequences thereof.

Article 147 A securities company shall properly preserve the account data, entrustment and transaction records of its clients and the various data relating to its internal procedures and business operation. No one shall conceal, forge, distort or destroy those data. The aforementioned data shall be preserved for a period of not less than 20 years.

Article 148 Securities companies shall, in accordance with relevant regulations, submit information and materials relating to their business management, including their business operations and financial affairs, to the securities regulatory authority under the State Council. The securities regulatory authority under the State Council has the power to demand securities companies, their shareholders or persons in practical control to provide relevant information and materials within the designated period of time.

The information and materials submitted or provided by a securities company, its shareholders or persons in practical control to the securities regulatory authority under the State Council must be truthful, accurate and complete.

Article 149 Where the securities regulatory authority under the State Council considers necessary, it shall entrust an accounting office or an asset appraisal institution to audit or appraise a securities company with respect to its financial position, internal control and asset value of the company. The specific measures thereof shall be formulated by the securities regulatory authority under the State Council in conjunction with the relevant departments in charge.

Article 150 Where the net capital level or other risk control thresholds of a securities company is not in conformity with the specified level or thresholds, the securities regulatory authority under the State Council shall order the company to rectify within a specified time limit; if the company fails to do so at the expiration of the time limit, or its behavior severely threatens the steady operation of the company or jeopardizes the lawful rights and interests of the clients of the company, the securities regulatory authority under the State Council may take the following measures against the company as the case may be:

- (1) to impose restrictions on the business activities of the company, order it to suspend part of its businesses, or to withhold approval with respect to its application for new businesses;
- (2) to withhold approval with respect to its application for increasing or acquiring business branches;
- (3) to impose restrictions on the profit distribution of the company, or on the compensation payments or benefit availabilities to its directors, supervisors or senior managers;
- (4) to impose restrictions on the alienation of the property of the company, or the creation of other rights on its property;
- (5) to order the company to replace its directors, supervisors or senior managers, or to impose restrictions on their rights;
- (6) to order the controlling shareholders to divest their interests in the company or to impose restrictions on the exercise of the shareholder rights of relevant shareholders; or

(7) to revoke the relevant business permits.

Upon completion of rectification, the securities company shall submit a report to the securities regulatory authority under the State Council. The securities regulatory authority under the State Council shall go through the procedure of check and acceptance thereupon. Where the risk control thresholds are met, the relevant measures taken against the company under the provisions of the preceding paragraph shall be removed within three days after completion of check and acceptance.

Article 151 Where a shareholder of a securities company makes false capital contribution to or illegally draws back capital contribution from the company, the securities regulatory authority under the State Council shall order him to set it right within a specified time limit, and may also order him to divest his interests in the company.

Before the shareholder mentioned under the preceding paragraph sets right his illegal activities or divests his interests in the company, the securities regulatory authority under the State Council may impose restrictions on his shareholder rights.

Article 152 Where a director, supervisor or senior manager of a securities company fails to perform his duties diligently, resulting in the company's gross violation of laws or rules or exposing the company to tremendous risks, the securities regulatory authority under the State Council may disqualify him for the post and order the company to replace him.

Article 153 Where a securities company conducts business against law or incurs tremendous risks, thus severely undermining the order of the securities markets or jeopardizing the interests of investors, the securities regulatory authority under the State Council may take such regulatory measures as ordering the company to suspend business operation for rectification, putting the company under the trusteeship of, or having it taken over by, a designated institution, or terminating the company.

Article 154 During the period when a securities company is ordered to suspend business operation for rectification, or is put under trusteeship or, is to be taken over by, a designated institution, or is to go into liquidation pursuant to law, or incurs tremendous risks, with the approval of the securities regulatory authority under the State Council, the following measures may be taken against the directors, supervisors or senior managers who are directly accountable to the company and other persons who are directly responsible:

(1) to notify the boarder control authorities to prevent them, pursuant to law, from leaving the country; and

(2) to apply to the judicial organ for banning them from removing or alienating their property or disposing of the property by other means, or creating other rights on their property.

## Chapter VII Securities Registrar and Clearance Institutions

Article 155 A securities registrar and clearance institution is a not-for-profit legal person that provides centralized registration, depository and clearance services for securities trading.

The establishment of a securities registrar and clearance institution shall be subject to approval by the securities regulatory authority under the State Council.

Article 156 The following conditions shall be met to establish a securities registrar and clearance institution:

- (1) Its self-owned funds are not less than 200 million yuan;
- (2) It has the premises and facilities essential to services for securities registration, depository and clearance;
- (3) Its principal managers and employees possess the requisite qualifications for securities business; and
- (4) Such other conditions as may be so prescribed by the securities regulatory authority under the State Council.

The name of a securities registrar and clearance institution shall include the words “securities registrar and clearance”.

Article 157 A securities registrar and clearance institution shall perform the following functions:

- (1) to open securities accounts and clearing accounts;
- (2) to process the deposit and transfer of securities;
- (3) to maintain the registers of securities holders;
- (4) to process the clearance and settlement of securities listed and traded on stock exchanges;
- (5) to distribute the gains from securities as entrusted by an issuer;
- (6) to respond to inquiries regarding the aforementioned businesses; and
- (7) such other businesses as may be so approved by the securities regulatory authority under the State Council.

Article 158 Registration and clearance of securities shall be done in a centralized and unified manner nationwide.

The articles of association and the rules of business of a securities registrar and clearance institution shall be formulated in accordance with law and shall be subject to approval by the securities regulatory authority under the State Council.

Article 159 Prior to listing for trading, the holder of securities shall have all of his securities deposited with a securities registrar and clearance institution.

The securities registrar and clearance institution shall not misappropriate the securities of its clients’.

Article 160 A securities registrar and clearance institution shall furnish the issuers of securities with the register of securities holders and related materials.

The securities registrar and clearance institution shall, based on its processed results of securities registration and clearance, confirm the fact that an identified securities holder does own the securities, and make available the registration materials of securities holders.

The securities registrar and clearance institution shall ensure the truthfulness, accuracy and completeness of the register of securities holders and the records of registration and transfer, and shall not conceal, forge, distort or destroy these materials.

Article 161 A securities registrar and clearance institution shall adopt the following measures to ensure the regular operation of business:

- (1) to maintain indispensable service equipment and sufficient procedures to protect data safety;
- (2) to maintain sufficient management systems for its business, finance and safety precautions; and
- (3) to maintain a sufficient system for risk control.

Article 162 A securities registrar and clearance institution shall properly preserve the original vouchers of registration, depository and clearance and the related documents and materials. The aforementioned materials shall be preserved for a period of not less than 20 years.

Article 163 A securities registrar and clearance institution shall establish a fund for securities clearing risks, which is to be used to pay for or make up the losses suffered by the securities registrar and clearance institution due to settlement breach, technical failures, operational errors or force majeure.

The fund for securities clearing risks shall be allocated from the business revenues and gains of the securities registrar and clearance institution, and may also be contributed by the clearing participants on a proportional basis reflecting their respective volumes of securities traded.

The measures for raising and controlling the fund for securities clearing risks shall be prescribed by the securities regulatory authority under the State Council in conjunction with the finance department of the State Council.

Article 164 The proceeds of the fund for securities clearing risks shall be deposited in a special account at a designated bank and managed under a separate entry.

After settling compensation claims with the proceeds of the securities clearing fund, the securities registrar and clearance institution shall seek recovery from the relevant liable persons.

Article 165 The application for dissolution submitted by a securities registrar and clearance institution shall be subject to approval by the securities regulatory authority under the State Council.



Article 166 To entrust a securities company with the processing of securities trading, an investor shall apply for opening a securities account. A securities registrar and clearance institution shall, in accordance with relevant regulations, open a securities account for the investor in the investor's own name.

In applying for opening an account, the investor must present the legal documentations to establish his identity as a Chinese citizen or his qualifications as a Chinese legal person, except as may otherwise be prescribed by the State.

Article 167 When providing settlement netting services for securities trading, a securities registrar and clearance institution shall request the participants in clearing to adhere to the principle of delivery versus payment, to deliver securities and funds in full and to pledge performance bonds.

No one shall use the securities, funds or performance bonds for a settlement prior to completion of the settlement.

Where a participant in clearing fails to discharge its settlement obligations, the securities registrar and clearance institution shall have the right to dispose of the property, mentioned in the preceding paragraph, in accordance with its business rules.

Article 168 The funds and securities collected for clearance by a securities registrar and clearance institution in accordance with the business rules must be deposited in the special accounts for clearance and settlement, may only be used in accordance with the business rules for the clearance and settlement of the completed securities transactions, and shall not be subject to compulsory enforcement.

## Chapter VIII Securities Service Institutions

Article 169 To engage in securities service business, investment consultancy institutions, financial advisory institutions, credit rating institutions, asset valuation institutions and accounting offices must obtain approval of the securities regulatory authority under the State Council and the relevant departments in charge.

The administrative measures for examination and approval of investment consultancy institutions, financial advisory institutions, credit rating institutions, asset valuation institutions and accounting offices, which intend to engage in securities service business, shall be formulated by the securities regulatory authority under the State Council and the relevant departments in charge.

Article 170 Persons from investment consultancy institutions, financial advisory institutions and credit rating institutions, who engage in securities service business, must possess the professional knowledge of securities and have at least two years of experience in securities business or in securities service business. The standards for determining the qualifications for securities business and the administrative measures in this regard shall be formulated by the securities regulatory authority under the State Council.

Article 171 When conducting securities service business, an investment consultancy institution and its employees shall not engage in the following activities:

- (1) making securities investment as an agent of entrusting parties;
- (2) undertaking to share the gains and losses from securities investment with the entrusting parties;
- (3) purchasing and selling the shares of the listed companies to which the consultancy institution provides services;
- (4) via the media or by other means, giving or spreading false information or information that misleads investors; and
- (5) such other activities as may be so prohibited by laws or administrative regulations.

Where the institution causes losses to investors due to any of the activities mentioned under the preceding paragraph, it shall be liable for compensation pursuant to law.

Article 172 Investment consultancy institutions and credit rating institutions engaged in securities service business shall charge service fees in compliance with the rates or the measures therefor prescribed by the relevant department in charge under the State Council.

Article 173 When preparing and producing such documents as audit reports, asset valuation reports, financial advisory reports, credit rating reports or legal opinions for such securities business activities as securities issuing, listing and trading, a securities service institution shall perform its duties diligently in examining and verifying the truthfulness, accuracy and completeness of the contents of the documents and materials on which their report, etc. are based. Where there are false entries, misleading statements, or major omission in the documents prepared and produced by them, which cause losses to others, they shall be held jointly and severally liable for compensation together with the issuers or listed companies, unless they can establish that they are faultless.

## Chapter IX Securities Industry Association

Article 174 The securities industry association is a self-regulatory organization of the securities industry and is a public organization with the status of a legal person.

Securities companies shall join the securities industry association.

The organ of power of the securities industry association is the assembly composed of all members.

Article 175 The charter of the securities industry association shall be drawn up by the assembly of the members and submitted to the securities regulatory authority under the State Council for the record.

Article 176 The securities industry association shall perform the following functions:

- (1) to enable members to understand and adhere to the laws and administrative regulations governing securities;
- (2) to safeguard the lawful rights of members according to laws and to present their suggestions and requests to the securities regulatory authority pursuant to law;
- (3) to collect and sort out information on securities in the service of members;
- (4) to formulate rules for members to follow, to organize vocational training among the employees of member units, and to promote professional exchange among members ;
- (5) to mediate disputes over securities business that arise among members or between members and their clients;
- (6) to organize members to study the evolution, operation and related topics of the securities industry;
- (7) to supervise and inspect the behaviors of members and to impose disciplinary sanctions on the members for their violation of laws, administrative regulations or the charter of the association; and
- (8) such other functions as may be so prescribed in the charter of the securities industry association.

Article 177 The securities industry association shall have a board of governors. The members of the board of governors shall be elected in accordance with provisions of the charter of the association.

#### Chapter X Securities Regulatory Authority

Article 178 The securities regulatory authority under the State Council shall exercise regulation over the securities markets, maintain order of the markets and ensure the lawful operation of the markets pursuant to law.

Article 179 The securities regulatory authority under the State Council shall perform the following functions in exercising regulation over the securities markets:

- (1) to formulate regulations and rules for the regulation of the securities markets and exercise the power of examination or approval pursuant to law;
- (2) to exercise the regulation over the issuance, listing, trading, registration, depository and clearance of securities pursuant to law;
- (3) to exercise regulation over the securities business of securities issuers, listed companies, securities companies, management companies of securities investment funds, securities service institutions, stock exchanges and securities registrar and clearance institutions pursuant to law;
- (4) to formulate the standards for the qualifications and code of conduct for professionals in the securities business pursuant to law, and to supervise the implementation thereof;
- (5) to supervise and inspect, pursuant to law, the publication of information concerning the issuance, listing and trading of securities;

- (6) to guide and supervise the activities of the securities industry association pursuant to law;
- (7) to investigate and penalize, pursuant to law, violations of laws or administrative regulations governing the securities markets; and
- (8) such other functions as may be so prescribed by laws or administrative regulations.

The securities regulatory authority under the State Council may establish a mechanism for cooperative regulation with the securities regulatory authorities of other countries or regions, to facilitate cross-boarder regulation.

Article 180 When performing its duties pursuant to law, the securities regulatory authority under the State Council shall have the power to adopt the following measures:

- (1) to conduct on-the-spot inspection of a securities issuer, listed company, securities company, management company of securities investment funds, securities service institution, stock exchange and securities registrar and clearance institution pursuant to law;
- (2) to enter the site where suspected violations of law are committed to conduct investigation and collect evidence;
- (3) to inquire the parties concerned, the units and individuals related to the events under investigation and require them to give explanations to the matters related to the events under investigation;
- (4) to check and duplicate such materials as property registration and communication records related to the events under investigation;
- (5) to check and duplicate the securities transaction records, registration and transfer records, financial and accounting materials of the units and individuals related to the events under investigation and other related documents and materials; to seal up for safekeeping the documents and materials which may be transferred to another place, concealed or destroyed;
- (6) to inquire about the accounts of funds and securities and bank accounts of the parties concerned and of the units and individuals related to the events under investigation; where there is evidence to substantiate the fact that the property involved such as illegal funds and securities has been or is liable to be transferred to another place or concealed, or that important evidence has been or is liable to be concealed, forged or destroyed, to freeze or seal up the said accounts with the approval of the chief person in charge of the securities regulatory authority under the State Council; and
- (7) when investigating serious violations of the law governing securities, such as manipulation of securities markets and insider trading, with the approval of the chief person in charge of the securities regulatory authority under the State Council, to impose restrictions on the purchasing and selling of the securities by the parties involved in the event under investigation, provided that the period of restriction does not exceed 15 trading days; in complicated cases, such period may be extended for another 15 trading days.

Article 181 When exercising supervision or inspection or conducting investigation in performing the duties of the securities regulatory authority under the State Council pursuant to law, the officials sent for the purpose shall be not less than two persons, and they shall show their lawful identifications and the notifications of supervision, inspection or investigation. Where the officials sent for supervision, inspection or investigation are less than two persons, or such officials fail to show their lawful identifications and the notifications of supervision, inspection or investigation, the unit under inspection or investigation shall have the right to refuse.

Article 182 Staff members of the securities regulatory authority under the State Council must be devoted to their duties, act in accordance with law, and be impartial and honest. They shall not take advantage of their positions to seek illegitimate gains, or disclose the commercial secrets of the relevant units and individuals they get to know.

Article 183 When the securities regulatory authority under the State Council performs its duties pursuant to law, the units and individuals under inspection or investigation shall cooperate, provide truthful documents and materials required, and shall not refuse to cooperate, place obstacles or conceal such documents and materials.

Article 184 The rules and regulations formulated, and the work system for regulation established, by the securities regulatory authority under the State Council pursuant to law shall be made public.

The decisions made by the securities regulatory authority under the State Council, on the basis of the results of its investigations, to punish violations of the law governing securities, shall be made public.

Article 185 The securities regulatory authority under the State Council shall, together with other financial regulatory authorities under the State Council, establish a mechanism for sharing regulatory information.

When the securities regulatory authority under the State Council performs its duties and conducts supervision, inspection or investigation pursuant to law, the departments concerned shall cooperate with it.

Article 186 When in performing its duties pursuant to law, the securities regulatory authority under the State Council discovers that a violation of the law governing securities constitutes a suspected criminal offense, it shall transfer the case to a judicial organ for handling.

Article 187 Staff members of the securities regulatory authority under the State Council shall not hold any positions concurrently in any institutions which are subject to its regulation.

## Chapter XI Legal Liability

Article 188 Where an entity, without approval of the statutory authority, publicly issues securities or does so in disguised form, it shall be ordered to cease such issuing and return the funds thus raised, plus the bank deposit interest for the same period, and shall be fined not less than one

percent but not more than five percent of the amount of the illegally raised funds; the company incorporated through public issuance of securities without approval or in disguised form shall be banned by the authority or department performing the regulatory duties pursuant to law, in conjunction with the local people's government at or above county level. The person directly in charge and the other persons directly responsible shall be given a warning and, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan each.

Article 189 An issuer that does not meet the conditions for issuance and has not started the issuing of securities although it has obtained approval by fraudulent means shall be fined not less than 300,000 yuan but not more than 600,000 yuan; if it has started such issuing, it shall be fined not less than one percent but not more than five percent of the amount of the illegally raised funds. The person directly in charge and the other persons directly responsible shall be fined not less than 30,000 yuan but not more than 300,000 yuan each.

Where the illegal act mentioned in the preceding paragraph is instigated by a controlling shareholder or a person in practical control of the issuer, punishment shall be meted out pursuant to the provisions of the preceding paragraph.

Article 190 Where a securities company underwrites or purchases and sells as an agent the securities issued to the public without approval, it shall be ordered to cease such underwriting or purchasing and selling, its illegal gains shall be confiscated, and it shall, in addition, be fined not less than one time but not more than five times the illegal gains; if there are no illegal gains or the illegal gains are less than 300,000 yuan, it shall be fined not less than 300,000 yuan but not more than 600,000 yuan; where losses are caused to investors, it shall be held jointly and severally liable for the losses with the issuer. The person directly in charge and the other persons directly responsible shall be given a warning, be disqualified for their posts or for the securities business and, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan each.

Article 191 Where a securities company commits one of the following acts in underwriting, it shall be ordered to rectify, be given a warning, its illegal gains shall be confiscated, and it may, in addition, be fined not less than 300,000 yuan but not more than 600,000 yuan; if the circumstances are serious, its business permits in question shall be suspended or revoked; if losses are caused to other securities underwriting institutions or investors, it shall be held liable for the losses pursuant to law; the person directly in charge and the other persons directly responsible shall be given a warning and may, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan each; and if the circumstances are serious, they shall be disqualified for their posts or for the securities business:

- (1) issuing false advertisements or advertisements that mislead investors, or conducting other promotion activities to the same effect;
- (2) soliciting underwriting business through illegitimate competition; and
- (3) other acts in violation of the provisions governing securities underwriting business.

Article 192 Where a sponsor produces instruments of sponsorship with false entries, misleading statements or major omissions, or fails to perform its other obligatory duties, it shall be ordered to

rectify and be given a warning, its illegal gains shall be confiscated, and it shall, in addition, be fined not less than one time but not more than five times its business earnings; and if the circumstances are serious, its business permits in question shall be suspended or revoked. The person directly in charge and the other persons directly responsible shall be given a warning and shall, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan each; and if the circumstances are serious, they shall be disqualified for their posts or for the securities business.

Article 193 Where an issuer, a listed company or any other entity that is obligated to disclose information fails to disclose information according to the relevant regulations, or there are false entries, misleading statements or major omissions in the information disclosed, it shall be ordered to rectify, be given a warning, and shall, in addition, be fined not less than 300,000 yuan but not more than 600,000 yuan. The person directly in charge and the other persons directly responsible shall be given a warning and shall, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan each.

Where an issuer, a listed company or any other entity that is obligated to disclose information fails to submit relevant reports in accordance with the relevant regulations, or there are false entries, misleading statements or major omissions in the reports submitted, it shall be ordered to rectify, be given a warning, and shall, in addition, be fined not less than 300,000 yuan but not more than 600,000 yuan. The person directly in charge and the other persons directly responsible shall be given a warning and shall, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan each.

Where the illegal act mentioned in the preceding two paragraphs is instigated by a controlling shareholder or a person in practical control of the issuer, listed company or the entity that is obligated to disclose information, the instigator shall be punished in accordance with the provisions of the preceding two paragraphs.

Article 194 Where an issuer or listed company, without approval, diverts the funds raised through public issuance of securities from the purpose set for their use, it shall be ordered to rectify, and the person directly in charge and the other persons directly responsible shall be given a warning and shall, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan each.

Where the illegal act mentioned in the preceding paragraph is instigated by a controlling shareholder or a person in practical control of the issuer or listed company, the instigator shall be given a warning and shall, in addition, be fined not less than 300,000 yuan but not more than 600,000 yuan. The person directly in charge and the other persons directly responsible shall be punished in accordance with the provisions of the preceding paragraph.

Article 195 Where the director, supervisor or senior manager of a listed company, or the shareholder holding 5% or more of the shares of the listed company sells or repurchases the shares of the said company in violation of the provisions of Article 47 of this Law, he shall be given a warning and may, in addition, be fined not less than 30,000 yuan but not more than 100,000 yuan.

Article 196 Where a securities trading site is illegally established, it shall be banned by the people's government at or above county level, its illegal gains shall be confiscated, and it shall be fined not less than one time but not more than five times the illegal gains; where there are no illegal gains or

the illegal gains are less than 100,000 yuan, it shall be fined not less than 100,000 yuan but not more than 500,000 yuan. The person directly in charge and the other persons directly responsible shall be given a warning and shall, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan each.

Article 197 Where a securities company is established without approval, or securities business is conducted illegally, it shall be banned by the securities regulatory authority, its illegal gains shall be confiscated, and it shall be fined not less than one time but not more than five times the illegal gains; if there are no illegal gains or the illegal gains are less than 300,000 yuan, it shall be fined not less than 300,000 yuan but not more than 600,000 yuan. The person directly in charge and the other persons directly responsible shall be given a warning and shall, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan each.

Article 198 Where a company, in violation of the provisions of this Law, engages a person who does not possess the qualifications for a particular post or for securities business, it shall be ordered by the securities regulatory authority to rectify, be given a warning and may, in addition, be fined not less than 100,000 yuan but not more than 300,000 yuan; and the person directly in charge and the other persons directly responsible shall be given a warning and shall, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan each.

Article 199 Where a person who is prohibited by the provisions of laws or administrative regulations from participating in share trading holds or trades in shares directly or under an assumed name or in the name of another person, he shall be ordered to divest his illegally held shares, his illegal gains shall be confiscated, and he shall be fined not more than the equivalent value of the shares traded in; if the person is a State functionary, he shall, in addition, be given an administrative sanction in accordance with law.

Article 200 Where the employee of a stock exchange, securities company, securities registrar and clearing institution or securities service institution, or a staff member of the securities industry association intentionally provides false materials, conceals, forges, distorts or destroys transaction records, or inveigles investors into purchasing or selling securities, he shall be disqualified for securities business and shall, in addition, be fined not less than 30,000 yuan but not more than 100,000 yuan; if he is a State functionary, he shall, in addition, be given an administrative sanction in accordance with law.

Article 201 Where securities service institutions and their staff members that produce such documents as audit reports, asset valuation reports or legal opinions to support share issuing, listing and trading purchase or sell shares in violation of the provisions of Article 45 of this Law, they shall be ordered to divest their illegally held shares, their illegal gains shall be confiscated, and they shall be fined not more than the equivalent value of the shares traded in.

Article 202 Prior to the publication of the information concerning securities issuance or trading or of other information that may have a considerable effect on the price of certain securities, a person with inside information about securities trading or a person who illegally obtains such inside information purchases or sells the securities in question, divulges such information, or suggests another person purchase or sell such securities, he shall be ordered to divest his illegally held



securities according to law, his illegal gains shall be confiscated, and he shall, in addition, be fined not less than one time but not more than five times the illegal gains; if there are no illegal gains or the illegal gains are less than 30,000 yuan, he shall be fined not less than 30,000 yuan but not more than 600,000 yuan. Where a unit engages in insider trading, the person directly in charge and the other persons directly responsible shall be given a warning and shall, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan each. Where a staff member of the securities regulatory authority engages in insider trading, he shall receive a heavier punishment.

Article 203 An entity that, in violation of the provisions of this Law, manipulates the securities markets shall be ordered to divest its illegally held securities, its illegal gains shall be confiscated, and it shall be fined not less than one time but not more than five times the illegal gains; and if there are no illegal gains or the illegal gains are less than 300,000 yuan, it shall be fined not less than 300,000 yuan but not more than 3,000,000 yuan. Where the manipulator is a unit, the person directly in charge of the unit and the other persons directly responsible shall be given a warning and shall, in addition, be fined not less than 100,000 yuan but not more than 600,000 yuan each.

Article 204 Where an entity, in violation of the provisions of this Law, purchases or sells securities within the restricted period of their assignment, it shall be ordered to rectify, be given a warning and shall, in addition, be fined not more than the equivalent value of the securities illegally purchased or sold. The person directly in charge and the other persons directly responsible shall be given a warning and shall, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan each.

Article 205 Where a securities company, in violation of the provisions of this Law, provides funds or securities to finance their clients to trade in securities, its illegal gains shall be confiscated, its business permits in question shall be suspended or revoked, and it shall be fined not more than the equivalent value of the illegally provided funds or securities. The person directly in charge and the other persons directly responsible shall be given a warning, be disqualified for the posts or for the securities business, and shall, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan each.

Article 206 Where a unit or individual that, in violation of the provisions of the first or the third paragraph of Article 78 of this Law, disrupts the securities markets, it/he shall be ordered to rectify, the illegal gains shall be confiscated, and it /he shall, in addition, be fined not less than one time but not more than five times the illegal gains; if there are no illegal gains or the illegal gains are less than 30,000 yuan, it/he shall be fined not less than 30,000 yuan but not more than 200,000 yuan.

Article 207 Where a unit or individual that, in violation of the provisions of the second paragraph of Article 78 of this Law, makes false statements or gives misleading information in the course of securities trading, it/he shall be ordered to rectify and be fined not less than 30,000 yuan but not more than 200,000 yuan; if the offender is a State functionary, he shall, in addition, be given an administrative sanction in accordance with law.

Article 208 Where a legal person opens an account in another person's name or makes use of another person's account to trade in securities, it shall be ordered to rectify, its illegal gains shall be

confiscated, and it shall, in addition, be fined not less than one time but not more than five times the illegal gains; if there are no illegal gains or the illegal gains are less than 30,000 yuan, it shall be fined not less than 30,000 yuan but not more than 300,000 yuan. The person directly in charge and the other persons directly responsible shall be given a warning and shall, in addition, be fined not less than 30,000 yuan but not more than 100,000 yuan each.

Where a securities company provides its own or another person's securities trading account for the illegal acts mentioned in the preceding paragraph, in addition to the punishments specified in the preceding paragraph, the person directly in charge and the other person directly responsible shall be disqualified for the posts or for the securities business.

Article 209 Where a securities company, in violation of the provisions of this Law, conducts securities proprietary account transactions by using another person's name or in the name of a natural person, it shall be ordered to rectify, its illegal gains shall be confiscated, and it shall, in addition, be fined not less than one time but not more than five times the illegal gains; if there are no illegal gains or the illegal gains are less than 300,000 yuan, it shall, in addition, be fined not less than 300,000 yuan but not more than 600,000 yuan; and if the circumstances are serious, its permit for securities proprietary account transaction shall be suspended or revoked. The person directly in charge and the other persons directly responsible shall be given a warning, they shall be disqualified for the posts or for securities business, and shall, in addition, be fined not less than 30,000 yuan but not more than 100,000 yuan each.

Article 210 Where a securities company trades in securities or processes transactions at variance with the entrustment of a client or handles matters other than transactions against the client's expression of his true intention, it shall be ordered to rectify and shall be fined not less than 10,000 yuan but not more than 100,000 yuan. If it causes losses to the client, it shall be held liable for the losses in accordance with law.

Article 211 Where a securities company or a securities registrar and clearing institution misappropriate its clients' funds or securities, or trades in securities for its clients without their entrustments, it shall be ordered to rectify, its illegal gains shall be confiscated, and it shall, in addition, be fined not less than one time but not more than five times the illegal gains; if there are no illegal gains or the illegal gains are less than 100,000 yuan, it shall be fined not less than 100,000 yuan but not more than 600,000 yuan; and if the circumstances are serious, it shall be ordered to close down, or its business permits in question shall be revoked. The person directly in charge and the other persons directly responsible shall be given a warning, they shall be disqualified for the posts or for securities business, and shall, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan each.

Article 212 Where a securities company that conducts brokerage business accepts the entrustment of discretionary power of a client to trade in securities, or undertakes to secure gains or make up losses to a client in securities trading, it shall be ordered to rectify, its illegal gains shall be confiscated, and it shall, in addition, be fined not less than 50,000 yuan but not more than 200,000 yuan, and its business permits in question may be suspended or revoked. The person directly in charge and the other persons directly responsible shall be given a warning and shall, in addition, be fined not less than 30,000 yuan but not more than 100,000 yuan each, and they may be

disqualified for the posts or for securities business. Article 213 Where an acquirer fails to discharge its obligations of announcing its acquisition of a listed company, tendering an acquisition offer, submitting a report on its acquisition of the listed company, etc., as is required by the provisions of this Law, or amends the tendered acquisition offer without approval, it shall be ordered to rectify, be given a warning, and shall, in addition, be fined not less than 100,000 yuan but not more than 300,000 yuan; pending rectification, the acquirer shall not exercise the right to vote otherwise vested through the shares acquired by itself or jointly with another entity through agreement or other arrangements. The person directly in charge and the other persons directly responsible shall be given a warning, and shall, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan each.

Article 214 Where an acquirer or its controlling shareholder, by making use of the acquisition of a listed company, impairs the lawful rights and interests of the company acquired and its shareholders, it shall be ordered to rectify and be given a warning; if the circumstances are serious, it shall, in addition, be fined not less than 100,000 yuan but not more than 600,000 yuan. Where losses are caused to the company acquired and its shareholders, it shall be held liable for the losses. The person directly in charge and the other persons directly responsible shall be given a warning and shall, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan each.

Article 215 Where a securities company or its employee, in violation of the provisions of this Law, accepts a client's entrustment in private to trade in securities, it/he shall be ordered to rectify and be given a warning, the illegal gains shall be confiscated, and it/he shall be fined not less than one time but not more than five times the illegal gains; if there are no illegal gains or the illegal gains are less than 100,000 yuan, it/he shall be fined not less than 100,000 yuan but not more than 300,000 yuan.

Article 216 Where a securities company, without approval, engages in the trading of non-listed securities, it shall be ordered to rectify, the illegal gains shall be confiscated, and it shall be fined not less than one time but not more than five times the illegal gains.

Article 217 Where a securities company, without justifiable reasons, fails to commence business three months after its incorporation, or ceases business for three consecutive months or longer after the commencement of business, its corporate business license shall be revoked by the company registration authority.

Article 218 Where a securities company, in violation of the provisions of this Law, establishes, acquires or closes a branch office, or merges with another company, divides, suspends business, dissolves or goes bankrupt, or establishes or acquires a securities business institution abroad or becomes a shareholder of such an institution, it shall be ordered to rectify, its illegal gains shall be confiscated, and it shall, in addition, be fined not less than one time but not more than five times the illegal gains; if there are no illegal gains or the illegal gains are less than 100,000 yuan, it shall be fined not less than 100,000 yuan but not more than 600,000 yuan. The person directly in charge shall be given a warning and shall, in addition, be fined not less than 30,000 yuan but not more than 100,000 yuan.

Where a securities company, in violation of the provisions of Article 129 of this Law, alters the relevant matters, it shall be ordered to rectify and shall, in addition, be fined not less than 100,000 yuan but not more than 300,000 yuan. The person directly in charge shall be given a warning and shall, in addition, be fined not more than 50,000 yuan.

Article 219 Where a securities company operates securities business beyond the licensed business scope, it shall be ordered to rectify, its illegal gains shall be confiscated, and it shall, in addition, be fined not less than one time but not more than five times the illegal gains; if there are no illegal gains or the illegal gains are less than 300,000 yuan, it shall be fined not less than 300,000 yuan but not more than 600,000 yuan; and if the circumstances are serious, it shall be ordered to close down. The person directly in charge and the other persons directly responsible shall be given a warning, they shall be disqualified for the posts or for securities business, and shall, in addition, be fined not less than 30,000 yuan but not more than 100,000 yuan each.

Article 220 Where a securities company fails to separate its securities brokerage, underwriting, proprietary account transaction and securities asset management from each other, as is required by law, but mixes them up in operation, it shall be ordered to rectify, its illegal gains shall be confiscated, and it shall, in addition, be fined not less than 300,000 yuan but not more than 600,000 yuan; if the circumstances are serious, its business permits in question shall be revoked. The person directly in charge and the other persons directly responsible shall be given a warning and shall, in addition, be fined not less than 30,000 yuan but not more than 100,000 yuan each; and if the circumstances are serious, they shall be disqualified for the posts or for the securities business.

Article 221 Where an entity obtains a securities business permit by submitting false certificates or by such other fraudulent means as concealing important facts, or a securities company commits a serious illegal act in the course of securities trading, thus it ceases to possess the qualifications for the business, its business permit shall be revoked by the securities regulatory authority.

Article 222 Where a securities company or its shareholder or a person in practical control, in violation of the relevant provisions, refuses to submit or provide information and materials of business management to the securities regulatory authority, or submits or provides such information and materials with false entries, misleading statements or major omissions, it shall be ordered to rectify, be given a warning and shall, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan, and its securities business permits in question may be suspended or revoked. The person directly in charge and the other persons directly responsible shall be given a warning and shall, in addition, be fined not more than 30,000 yuan, and they may be disqualified for the posts or the securities business.

Where a securities company provides finance or guaranty for its shareholder or a person connected with the shareholder, it shall be ordered to rectify, be given a warning and shall, in addition, be fined not less than 100,000 yuan but not more than 300,000 yuan. The person directly in charge and the other persons directly responsible shall be fined not less than 30,000 yuan but not more than 100,000 yuan each. If the shareholder is at fault, pending its rectification as required, the securities regulatory authority under the State Council may restrict his shareholder rights; and if he refuses to rectify, the said authority may order him to divest the shares he holds of the securities company.

Article 223 Where a securities service institution fails to perform its duties diligently so that there are false entries, misleading materials or major omissions in the documents it prepares and produces, it shall be ordered to rectify, its business revenues in question shall be confiscated, its business permit for securities service business shall be suspended or revoked, and it shall, in addition, be fined not less than one time but not more than five times the business revenues in question. The person directly in charge and the other persons directly responsible shall be given a warning, they shall be disqualified for the securities business, and shall, in addition, be fined not less than 30,000 yuan but not more than 100,000 yuan each.

Article 224 Where an entity issues or underwrites corporate bonds in violation of the provisions of this Law, it shall be punished in accordance with the relevant provision of this Law by the department authorized by the State Council.

Article 225 Where a listed company, securities company, stock exchange, securities registrar and clearing institution or securities service institution fails to preserve the relevant documents and materials in accordance with the relevant provisions, it shall be ordered to rectify, be given a warning, and shall, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan; and if it conceals, forges, distorts or destroys relevant documents and materials, it shall be given a warning and shall, in addition, be fined not less than 300,000 yuan but not more than 600,000 yuan.

Article 226 Where a securities registrar and clearing institution is established without approval of the securities regulatory authority under the State Council, it shall be banned by the securities regulatory authority, its illegal gains shall be confiscated, and it shall, in addition, be fined not less than one time but not more than five times the illegal gains.

Where an investment consultancy institution, financial advisory institution, credit appraisal institution, asset valuation institution or accounting office engages in securities service business without approval, it shall be ordered to rectify, its illegal gains shall be confiscated, and it shall, in addition, be fined not less than one time but not more than five times the illegal gains.

Where a securities registrar and clearing institution or securities service institution violates the provisions of this Law or the business rules formulated according to law, the securities regulatory authority shall order it to rectify, confiscates its illegal gains and, in addition, impose on it a fine of not less than one time but not more than five times the illegal gains; if there are no illegal gains or the illegal gains are less than 100,000 yuan, the said authority shall impose on it a fine of not less than 100,000 yuan but not more than 300,000 yuan; and if the circumstances are serious, the authority shall order it to close down, or revoke its securities service business permit.

Article 227 Where the securities regulatory authority under the State Council or the department authorized by the State Council commits one of the following acts, the person directly in charge and the other persons directly responsible shall be given administrative sanctions according to law:

(1) giving approval to an application for securities issuance, establishment of securities company, etc. that is not in conformity with the provisions of this Law;

(2) in violation of the relevant provisions, adopting the measures specified in Article 180 of this Law such as conducting on-the-spot inspection, investigation for collecting evidence, making inquiries, freezing funds or securities, and sealing up documents and materials for safekeeping;

(3) imposing administrative penalties on relevant institutions and persons in violation of provisions; and

(4) other acts committed when failing to perform its duties in accordance with law.

Article 228 Where the staff member of a securities regulatory authority or the member of an issuance examination commission fails to perform his duties as provided for by this Law, or abuses his power, or neglects his duty, or seeks illegitimate gains by taking advantage of his position, or discloses the commercial secrets of a unit or individual which he comes to know, he shall be investigated for his legal liabilities in accordance with law.

Article 229 Where a stock exchange, after examination, grants an application for listing securities that does not meet the conditions specified by this Law, it shall be given a warning, its business revenues shall be confiscated, and it shall, in addition, be fined not less than one time but not more than five times the business revenues. The person directly in charge and the other persons directly responsible shall be given a warning and shall, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan each.

Article 230 Where an entity, without resorting to violence or threat, refuses to let the securities regulatory authority and its staff members exercise the powers of supervision, inspection and investigation according to law, or prevent them from doing so, it shall be given an administrative penalty for public security according to law.

Article 231 Where a violation of the provisions of this Law constitutes a crime, criminal responsibility shall be investigated for according to law.

Article 232 Where, for violation of the provisions of this Law, an entity is held liable for civil compensation and is required to pay a fine or penalty, but the enforceable property is not sufficient to satisfy both simultaneously, it shall bear the civil compensation first. Article 233 Where an entity violates laws, administrative regulations or the relevant regulations of the securities regulatory authority under the State Council, if the circumstances are serious, the securities regulatory authority under the State Council may impose the measure of denying the persons held responsible access to securities markets.

Denying access to the securities markets, mentioned in the preceding paragraph, is a system under which a person is barred from engaging in the securities business or serving as a director, supervisor or senior manager of a listed company for a certain period of time or permanently.

Article 234 The fines collected and the illegal gains confiscated according to this Law shall all go to the State treasury.

Article 235 Where a party is not satisfied with the decision on punishment made by the securities regulatory authority or the department authorized by the Stated Council, it may apply for an administrative reconsideration or bring a lawsuit directly in a people's court according to law.

## Chapter XII Supplementary Provisions

Article 236 Securities the listing and trading of which on stock exchanges have been approved according to administrative regulations before this Law goes into effect shall continue to be traded according to law.

Securities business institutions which have been established upon approval pursuant to administrative regulations and regulations of the finance department under the State Council before this Law goes into effect and which do not fully conform to the provisions of this Law shall, within the specified time limit, work to meet the requirements provided for by this Law. The specific measures in this regard shall be formulated separately by the State Council.

Article 237 To apply for approval for public issuance of shares or corporate bonds, the issuer shall pay examination fees in accordance with relevant rules.

Article 238 Direct or indirect issuance of securities abroad by domestic enterprises, or listing and trading of securities abroad by such enterprises, shall be subject to approval given by the securities regulatory authority under the State Council in accordance with the regulations of the State Council.

Article 239 The specific measures for the shares of domestic companies subscribed and traded in foreign currencies shall be formulated separately by the State Council.

Article 240 This Law shall go into effect as of January 1, 2006.

## **Maritime Code of the People's Republic of China**

Adopted at the 28th Meeting of the Standing Committee of the Seventh National People's Congress on November 7, 1992 and promulgated by Order No.64 of the President of the People's Republic of China on November 7, 1992

### Contents

#### Chapter I General Provisions

#### Chapter II Ships

##### Section 1 Ownership of Ships

##### Section 2 Mortgage of Ships

##### Section 3 Maritime Liens

#### Chapter III Crew

##### Section 1 Basic Principles

##### Section 2 The Master

#### Chapter IV Contract of Carriage of Goods by Sea

##### Section 1 Basic Principles

##### Section 2 Carrier's Responsibilities

##### Section 3 Shipper's Responsibilities

##### Section 4 Transport Documents

##### Section 5 Delivery of Goods

##### Section 6 Cancellation of Contract

##### Section 7 Special Provisions Regarding Voyage Charter Party

##### Section 8 Special Provisions Regarding Multimodal Transport Contract

#### Chapter V Contract of Carriage of Passengers by Sea

#### Chapter VI Charter Parties

##### Section 1 Basic Principles

##### Section 2 Time Charter Party



Section 3 Bareboat Charter Party

Chapter VII Contract of Sea Towage

Chapter VIII Collision of Ships

Chapter IX Salvage at Sea

Chapter X General Average

Chapter XI Limitation of Liability for Maritime Claims

Chapter XII Contract of Marine Insurance

Section 1 Basic Principles

Section 2 Conclusion, Termination and Assignment of Contract

Section 3 Obligations of the Insured

Section 4 Liability of the Insurer

Section 5 Loss of and Damage to the Subject Matter Insured and Abandonment

Section 6 Payment of Indemnity

Chapter XIII Limitation of Time

Chapter XIV Application of Law in Relation to Foreign-related Matters

Chapter XV Supplementary Provisions

Chapter I General Provisions

Article 1 This Code is enacted with a view to regulating the relations arising from maritime transport and those pertaining to ships, to securing and protecting the legitimate rights and interests of the parties concerned, and to promoting the development of maritime transport, economy and trade.

Article 2 "Maritime transport" as referred to in this Code means the carriage of goods and passengers by sea, including the sea-river and river-sea direct transport.

The provisions concerning contracts of carriage of goods by sea as contained in Chapter IV of this Code shall not be applicable to the maritime transport of goods between the ports of the People's Republic of China.

Article 3 "Ship" as referred to in this Code means sea-going ships and other mobile units, but does not include ships or craft to be used for military or public service purposes, nor small ships of less than 20 tons gross tonnage.

The term "ship" as referred to in the preceding paragraph shall also include ship's apparel.

Article 4 Maritime transport and towage services between the ports of the People's Republic of China shall be undertaken by ships flying the national flag of the People's Republic of China, except as otherwise provided for by laws or administrative rules and regulations.

No foreign ships may engage in the maritime transport or towage services between the ports of the People's Republic of China unless permitted by the competent authorities of transport and communications under the State Council.

Article 5 Ships are allowed to sail under the national flag of the People's Republic of China after being registered, as required by law, and granted the nationality of the People's Republic of China.

Ships illegally flying the national flag of the People's Republic of China shall be prohibited and fined by the authorities concerned.

Article 6 All matters pertaining to maritime transport shall be administered by the competent authorities of transport and communications under the State Council. The specific measures governing such administration shall be worked out by such authorities and implemented after being submitted to and approved by the State Council.

## Chapter II Ships

### Section 1 Ownership of Ships

Article 7 The ownership of a ship means the shipowner's rights to lawfully possess, utilize, profit from and dispose of the ship in his ownership.

Article 8 With respect to a State-owned ship operated by an enterprise owned by the whole people having a legal person status granted by the State, the provisions of this Code regarding the shipowner shall apply to that legal person.

Article 9 The acquisition, transference or extinction of the ownership of a ship shall be registered at the ship registration authorities; no acquisition, transference or extinction of the ship's ownership shall act against a third party unless registered.

The transference of the ownership of a ship shall be made by a contract in writing.

Article 10 Where a ship is jointly owned by two or more legal persons or individuals, the joint ownership thereof shall be registered at the ship registration authorities. The joint ownership of the ship shall not act against a third party unless registered.

## Section 2 Mortgage of Ships

Article 11 The right of mortgage with respect to a ship is the right of preferred compensation enjoyed by the mortgagee of that ship from the proceeds of the auction sale made in accordance with law where and when the mortgagor fails to pay his debt to the mortgagee secured by the mortgage of that ship.

Article 12 The owner of a ship or those authorized thereby may establish the mortgage of the ship.

The mortgage of a ship shall be established by a contract in writing.

Article 13 The mortgage of a ship shall be established by registering the mortgage of the ship with the ship registration authorities jointly by the mortgagee and the mortgagor. No mortgage may act against a third party unless registered.

The main items for the registration of the mortgage of a ship shall be:

- (1) Name or designation and address of the mortgagee and the name or designation and address of the mortgagor of the ship;
- (2) Name and nationality of the mortgaged ship and the authorities that issued the certificate of ownership and the certificate number thereof;
- (3) Amount of debt secured, the interest rate and the period for the repayment of the debt.

Information about the registration of mortgage of ships shall be accessible to the public for enquiry.

Article 14 Mortgage may be established on a ship under construction.

In registering the mortgage of a ship under construction, the building contract of the ship shall as well be submitted to the ship registration authorities.

Article 15 The mortgaged ship shall be insured by the mortgagor unless the contract provides otherwise. In case the ship is not insured, the mortgagee has the right to place the ship under insurance coverage and the mortgagor shall pay for the premium thereof.

Article 16 The establishment of mortgage by the joint owners of a ship shall, unless otherwise agreed upon among the joint owners, be subject to the agreement of those joint owners who have more than two thirds of the shares thereof.

The mortgage established by the joint owners of a ship shall not be affected by virtue of the division of ownership thereof.

Article 17 Once a mortgage is established on a ship, the ownership of the mortgaged ship shall not be transferred without the consent of the mortgagee.

Article 18 In case the mortgagee has transferred all or part of his right to debt secured by the mortgaged ship to another person, the mortgage shall be transferred accordingly.

Article 19 Two or more mortgages may be established on the same ship. The ranking of the mortgages shall be determined according to the dates of their respective registrations.

In case two or more mortgages are established, the mortgagees shall be paid out of the proceeds of the auction sale of the ship in the order of registration of their respective mortgages. The mortgages registered on the same date shall rank equally for payment.

Article 20 The mortgages shall be extinguished when the mortgaged ship is lost. With respect to the compensation paid from the insurance coverage on account of the loss of the ship, the mortgagee shall be entitled to enjoy priority in compensation over other creditors.

### Section 3 Maritime Liens

Article 21 A maritime lien is the right of the claimant, subject to the provisions of Article 22 of this Code, to take priority in compensation against shipowners, bareboat charterers or ship operators with respect to the ship which gave rise to the said claim.

Article 22 The following maritime claims shall be entitled to maritime liens:

- (1) Payment claims for wages, other remuneration, crew repatriation and social insurance costs made by the Master, crew members and other members of the complement in accordance with the relevant labour laws, administrative rules and regulations or labour contracts;
- (2) Claims in respect of loss of life or personal injury occurred in the operation of the ship;
- (3) Payment claims for ship's tonnage dues, pilotage dues, harbour dues and other port charges;
- (4) Payment claims for salvage payment; and
- (5) Compensation claims for loss of or damage to property resulting from tortious act in the course of the operation of the ship.

Compensation claims for oil pollution damage caused by a ship carrying more than 2,000 tons of oil in bulk as cargo that has a valid certificate attesting that the ship has oil pollution liability insurance coverage or other appropriate financial security are not within the scope of sub-paragraph(5) of the preceding paragraph.

Article 23 The maritime claims set out in paragraph 1 of Article 22 shall be satisfied in the order listed. However, any of the maritime claims set out in sub-paragraph(4) arising later than those under sub-paragraph (1) through (3) shall have priority over those under sub-paragraph (1) through (3). In case there are more than two maritime claims under sub-paragraphs (1),(2),(3) or (5) of paragraph 1 of Article 22, they shall be satisfied at the same time regardless of their respective occurrences; where they could not be paid in full, they shall be paid in proportion. Should there be more than two maritime claims under sub-paragraph (4), those arising later shall be satisfied first.

Article 24 The legal costs for enforcing the maritime liens, the expenses for preserving and selling the ship, the expenses for distribution of the proceeds of sale and other expenses incurred for the common interests of the claimants, shall be deducted and paid first from the proceeds of the auction sale of the ship.

Article 25 A maritime lien shall have priority over a possessory lien, and a possessory lien shall have priority over ship mortgage.

The possessory lien referred to in the preceding paragraph means the right of the ship builder or repairer to secure the building or repairing cost of the ship by means of detaining the ship in his possession when the other party to the contract fails in the performance thereof. The possessory lien shall be extinguished when the ship builder or repairer no longer possesses the ship he has built or repaired.

Article 26 Maritime liens shall not be extinguished by virtue of the transfer of the ownership of the ship, except those that have not been enforced within 60 days of a public notice on the transfer of the ownership of the ship made by a court at the request of the transferee when the transfer was effected.

Article 27 In case the maritime claims provided for in Article 22 of this Code are transferred, the maritime liens attached thereto shall be transferred accordingly.

Article 28 A maritime lien shall be enforced by the court by arresting the ship that gave rise to the said maritime lien.

Article 29 A maritime lien shall, except as provided for in Article 26 of this Code, be extinguished under one of the following circumstances:

- (1) The maritime claim attached by a maritime lien has not been enforced within one year of the existence of such maritime lien;
- (2) The ship in question has been the subject of a forced sale by the court; or
- (3) The ship has been lost.

The period of one year specified in sub-paragraph (1) of the preceding paragraph shall not be suspended or interrupted.

Article 30 The provisions of this Section shall not affect the implementation of the limitation of liability for maritime claims provided for in Chapter XI of this Code.

### Chapter III Crew

#### Section 1 Basic Principles

Article 31 The term "crew" means the entire complement of the ship, including the Master.

Article 32 The Master, deck officers, chief engineer, engineers, electrical engineer and radio operator must be those in possession of appropriate certificates of competency.

Article 33 Chinese "crew" engaged in international voyages must possess Seaman's Book and other relevant certificates issued by the harbour superintendency authorities of the People's Republic of China.

Article 34 In the absence of specific stipulations in this Code as regards the employment of the crew as well as their labour-related rights and obligations, the provisions of the relevant laws and administrative rules and regulations shall apply.

## Section 2 The Master

Article 35 The Master shall be responsible for the management and navigation of the ship.

Orders given by the Master within the scope of his functions and powers must be carried out by other members of the crew, the passengers and all persons on board.

The Master shall take necessary measures to protect the ship and all persons on board, the documents, postal matters, the goods as well as other property carried.

Article 36 To ensure the safety of the ship and all persons on board, the Master shall be entitled to confine or take other necessary measures against those who have committed crimes or violated laws or regulations on board, and to guard against their concealment, destruction or forging of evidence.

The Master, having taken actions as referred to in the preceding paragraph of this Article, shall make a written report of the case, which shall bear the signature of the Master himself and those of two or more others on board, and shall be handed over, together with the offender, to the authorities concerned for disposition.

Article 37 The Master shall make entries in the log book of any occurrence of birth or death on board and shall issue a certificate to that effect in the presence of two witnesses. The death certificate shall be attached with a list of personal belongings of the deceased, and attestation shall be given by the Master to the will, if any, of the deceased. Both the death certificate and the will shall be taken into safe keeping by the Master and handed over to the family members of the deceased or the organizations concerned.

Article 38 Where a sea casualty has occurred to a ship and the life and property on board have thus been threatened, the Master shall, with crew members and other persons on board under his command, make best efforts to run to the rescue. Should the foundering and loss of the ship have become inevitable, the Master may decide to abandon the ship. However, such abandonment shall be reported to the shipowner for approval except in case of emergency.

Upon abandoning the ship, the Master must take all measures first to evacuate the passengers safely from the ship in an orderly way, then make arrangements for crew members to evacuate, while the Master shall be the last to evacuate. Before leaving the ship, the Master shall direct the crew members to do their utmost to rescue the deck log book, the engine log book, the oil record book, the radio log book, the charts, documents and papers used in the current voyage, as well as valuables, postal matters and cash money.

Article 39 The duty of the Master in the management and navigation of the ship shall not be absolved even with the presence of a pilot piloting the ship.

Article 40 Should death occur to the Master or the Master be unable to perform his duties for whatever reason, the deck officer with the highest rank shall act as the Master; before the ship sails from its next port of call, the shipowner shall appoint a new Master to take command.

## Chapter IV Contract of Carriage of Goods by Sea

### Section 1 Basic Principles

Article 41 A contract of carriage of goods by sea is a contract under which the carrier, against payment of freight, undertakes to carry by sea the goods contracted for shipment by the shipper from one port to another.

Article 42 For the purposes of this Chapter:

- (1) "Carrier" means the person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper;
- (2) "Actual carrier" means the person to whom the performance of carriage of goods, or of part of the carriage, has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted under a sub-contract;
- (3) "Shipper" means:
  - a) The person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier;
  - b) The person by whom or in whose name or on whose behalf the goods have been delivered to the carrier involved in the contract of carriage of goods by sea;
- (4) "Consignee" means the person who is entitled to take delivery of the goods;
- (5) "Goods" includes live animals and containers, pallets or similar articles of transport supplied by the shipper for consolidating the goods.

Article 43 The carrier or the shipper may demand confirmation of the contract of carriage of goods by sea in writing. However, voyage charter shall be done in writing. Telegrams, telexes and telefaxes have the effect of written documents.

Article 44 Any stipulation in a contract of carriage of goods by sea or a bill of lading or other similar documents evidencing such contract that derogates from the provisions of this Chapter shall be null and void. However, such nullity and voidness shall not affect the validity of other provisions of the contract or the bill of lading or other similar documents. A clause assigning the

benefit of insurance of the goods in favour of the carrier or any similar clause shall be null and void.

Article 45 The provisions of Article 44 of this Code shall not prejudice the increase of duties and obligations by the carrier besides those set out in this Chapter.

## Section 2 Carrier's Responsibilities

Article 46 The responsibilities of the carrier with regard to the goods carried in containers covers the entire period during which the carrier is in charge of the goods, starting from the time the carrier has taken over the goods at the port of loading, until the goods have been delivered at the port of discharge. The responsibility of the carrier with respect to non-containerized goods covers the period during which the carrier is in charge of the goods, starting from the time of loading of the goods onto the ship until the time the goods are discharged therefrom. During the period the carrier is in charge of the goods, the carrier shall be liable for the loss of or damage to the goods, except as otherwise provided for in this Section.

The provisions of the preceding paragraph shall not prevent the carrier from entering into any agreement concerning carrier's responsibilities with regard to non-containerized goods prior to loading onto and after discharging from the ship.

Article 47 The carrier shall, before and at the beginning of the voyage, exercise due diligence to make the ship seaworthy, properly man, equip and supply the ship and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

Article 48 The carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

Article 49 The carrier shall carry the goods to the port of discharge on the agreed or customary or geographically direct route.

Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an act deviating from the provisions of the preceding paragraph.

Article 50 Delay in delivery occurs when the goods have not been delivered at the designated port of discharge within the time expressly agreed upon.

The carrier shall be liable for the loss of or damage to the goods caused by delay in delivery due to the fault of the carrier, except those arising or resulting from causes for which the carrier is not liable as provided for in the relevant Articles of this Chapter.

The carrier shall be liable for the economic losses caused by delay in delivery of the goods due to the fault of the carrier, even if no loss of or damage to the goods had actually occurred, unless such economic losses had occurred from causes for which the carrier is not liable as provided for in the relevant Articles of this Chapter.



The person entitled to make a claim for the loss of goods may treat the goods as lost when the carrier has not delivered the goods within 60 days from the expiry of the time for delivery specified in paragraph 1 of this Article.

Article 51 The carrier shall not be liable for the loss of or damage to the goods occurred during the period of carrier's responsibility arising or resulting from any of the following causes:

- (1) Fault of the Master, crew members, pilot or servant of the carrier in the navigation or management of the ship;
- (2) Fire, unless caused by the actual fault of the carrier;
- (3) Force majeure and perils, dangers and accidents of the sea or other navigable waters;
- (4) War or armed conflict;
- (5) Act of the government or competent authorities, quarantine restrictions or seizure under legal process;
- (6) Strikes, stoppages or restraint of labour;
- (7) Saving or attempting to save life or property at sea;
- (8) Act of the shipper, owner of the goods or their agents;
- (9) Nature or inherent vice of the goods;
- (10) Inadequacy of packing or insufficiency or illegibility of marks;
- (11) Latent defect of the ship not discoverable by due diligence; and
- (12) Any other cause arising without the fault of the carrier or his servant or agent.

The carrier who is entitled to exoneration from the liability for compensation as provided for in the preceding paragraph shall, with the exception of the causes given in sub-paragraph (2), bear the burden of proof.

Article 52 The carrier shall not be liable for the loss of or damage to the live animals arising or resulting from the special risks inherent in the carriage thereof. However, the carrier shall be bound to prove that he has fulfilled the special requirements of the shipper with regard to the carriage of the live animals and that under the circumstances of the sea carriage, the loss or damage has occurred due to the special risks inherent therein.

Article 53 In case the carrier intends to ship the goods on deck, he shall come into an agreement with the shipper or comply with the custom of the trade or the relevant laws or administrative rules and regulations.

When the goods have been shipped on deck in accordance with the provisions of the preceding paragraph, the carrier shall not be liable for the loss of or damage to the goods caused by the special risks involved in such carriage.

If the carrier, in breach of the provisions of the first paragraph of this Article, has shipped the goods on deck and the goods have consequently suffered loss or damage, the carrier shall be liable therefore.

Article 54 Where loss or damage or delay in delivery has occurred from causes from which the carrier or his servant or agent is not entitled to exoneration from liability, together with another cause, the carrier shall be liable only to the extent that the loss, damage or delay in delivery is attributable to the causes from which the carrier is not entitled to exoneration from liability; however, the carrier shall bear the burden of proof with respect to the loss, damage or delay in delivery resulting from the other cause.

Article 55 The amount of indemnity for the loss of the goods shall be calculated on the basis of the actual value of the goods so lost, while that for the damage to the goods shall be calculated on the basis of the difference between the values of the goods before and after the damage, or on the basis of the expenses for the repair.

The actual value shall be the value of the goods at the time of shipment plus insurance and freight.

From the actual value referred to in the preceding paragraph, deduction shall be made, at the time of compensation, of the expenses that had been reduced or avoided as a result of the loss or damage occurred.

Article 56 The carrier's liability for the loss of or damage to the goods shall be limited to an amount equivalent to 666.67 Units of Account per package or other shipping unit, or 2 Units of Account per kilogramme of the gross weight of the goods lost or damaged, whichever is the higher, except where the nature and value of the goods had been declared by the shipper before shipment and inserted in the bill of lading, or where a higher amount than the amount of limitation of liability set out in this Article had been agreed upon between the carrier and the shipper.

Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or other shipping units enumerated in the bill of lading as packed in such article of transport shall be deemed to be the number of packages or shipping units. If not so enumerated, the goods in such article of transport shall be deemed to be one package or one shipping unit.

Where the article of transport is not owned or furnished by the carrier, such article of transport shall be deemed to be one package or one shipping unit.

Article 57 The liability of the carrier for the economic losses resulting from delay in delivery of the goods shall be limited to an amount equivalent to the freight payable for the goods so delayed. Where the loss of or damage to the goods has occurred concurrently with the delay in delivery thereof, the limitation of liability of the carrier shall be that as provided for in paragraph 1 of Article 56 of this Code.

Article 58 The defence and limitation of liability provided for in this Chapter shall apply to any legal action brought against the carrier with regard to the loss of or damage to or delay in delivery of the goods covered by the contract of carriage of goods by sea, whether the claimant is a party to the contract or whether the action is founded in contract or in tort.

The provisions of the preceding paragraph shall apply if the action referred to in the preceding paragraph is brought against the carrier's servant or agent, and the carrier's servant or agent proves that his action was within the scope of his employment or agency.

Article 59 The carrier shall not be entitled to the benefit of the limitation of liability provided for in Article 56 or 57 of this Code if it is proved that the loss, damage or delay in delivery of the goods resulted from an act or omission of the carrier done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

The servant or agent of the carrier shall not be entitled to the benefit of limitation of liability provided for in article 56 or 57 of this Code, if it is proved that the loss, damage or delay in delivery resulted from an act or omission of the servant or agent of the carrier done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

Article 60 Where the performance of the carriage or part thereof has been entrusted to an actual carrier, the carrier shall nevertheless remain responsible for the entire carriage according to the provisions of this Chapter. The carrier shall be responsible, in relation to the carriage performed by the actual carrier, for the act or omission of the actual carrier and of his servant or agent acting within the scope of his employment or agency.

Notwithstanding the provisions of the preceding paragraph, where a contract of carriage by sea provides explicitly that a specified part of the carriage covered by the said contract is to be performed by a named actual carrier other than the carrier, the contract may nevertheless provide that the carrier shall not be liable for the loss, damage or delay in delivery arising from an occurrence which takes place while the goods are in the charge of the actual carrier during such part of the carriage.

Article 61 The provisions with respect to the responsibility of the carrier contained in this Chapter shall be applicable to the actual carrier. Where an action is brought against the servant or agent of the actual carrier, the provisions contained in paragraph 2 of Article 58 and paragraph 2 of Article 59 of this Code shall apply.

Article 62 Any special agreement under which the carrier assumes obligations not provided for in this Chapter or waives rights conferred by this Chapter shall be binding upon the actual carrier when the actual carrier has agreed in writing to the contents thereof. The provisions of such special agreement shall be binding upon the carrier whether the actual carrier has agreed to the contents or not.

Article 63 Where both the carrier and the actual carrier are liable for compensation, they shall jointly and severally be liable within the scope of such liability.

Article 64 If claims for compensation have been separately made against the carrier, the actual carrier and their servants or agents with regard to the loss of or damage to the goods, the aggregate amount of compensation shall not be in excess of the limitation provided for in Article 56 of this Code.

Article 65 The provisions of Article 60 through 64 of this Code shall not affect the recourse between the carrier and the actual carrier.

### Section 3 Shipper's Responsibilities

Article 66 The shipper shall have the goods properly packed and shall guarantee the accuracy of the description, mark, number of packages or pieces, weight or quantity of the goods at the time of shipment and shall indemnify the carrier against any loss resulting from inadequacy of packing or inaccuracies in the above-mentioned information.

The carrier's right to indemnification as provided for in the preceding paragraph shall not affect the obligation of the carrier under the contract of carriage of goods towards those other than the shipper.

Article 67 The shipper shall perform all necessary procedures at the port, customs, quarantine, inspection or other competent authorities with respect to the shipment of the goods and shall furnish to the carrier all relevant documents concerning the procedures the shipper has gone through. The shipper shall be liable for any damage to the interest of the carrier resulting from the inadequacy or inaccuracy or delay in delivery of such documents.

Article 68 At the time of shipment of dangerous goods, the shipper shall, in compliance with the regulations governing the carriage of such goods, have them properly packed, distinctly marked and labelled and notify the carrier in writing of their proper description, nature and the precautions to be taken. In case the shipper fails to notify the carrier or notified him inaccurately, the carrier may have such goods landed, destroyed or rendered innocuous when and where circumstances so require, without compensation. The shipper shall be liable to the carrier for any loss, damage or expense resulting from such shipment.

Notwithstanding the carrier's knowledge of the nature of the dangerous goods and his consent to carry, he may still have such goods landed, destroyed or rendered innocuous, without compensation, when they become an actual danger to the ship, the crew and other persons on board or to other goods. However, the provisions of this paragraph shall not prejudice the contribution in general average, if any.

Article 69 The shipper shall pay the freight to the carrier as agreed.

The shipper and the carrier may reach an agreement that the freight shall be paid by the consignee. However, such an agreement shall be noted in the transport documents.

Article 70 The shipper shall not be liable for the loss sustained by the carrier or the actual carrier, or for the damage sustained by the ship, unless such loss or damage was caused by the fault of the shipper, his servant or agent.

The servant or agent of the shipper shall not be liable for the loss sustained by the carrier or the actual carrier, or for the damage sustained by the ship, unless the loss or damage was caused by the fault of the servant or agent of the shipper.

### Section 4 Transport Documents

Article 71 A bill of lading is a document which serves as an evidence of the contract of carriage of goods by sea and the taking over or loading of the goods by the carrier, and based on which the carrier undertakes to deliver the goods against surrendering the same. A provision in the document stating that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking.

Article 72 When the goods have been taken over by the carrier or have been loaded on board, the carrier shall, on demand of the shipper, issue to the shipper a bill of lading.

The bill of lading may be signed by a person authorized by the carrier. A bill of lading signed by the Master of the ship carrying the goods is deemed to have been signed on behalf of the carrier.

Article 73 A bill of lading shall contain the following particulars:

- (1) Description of the goods, mark, number of packages or pieces, weight or quantity, and a statement, if applicable, as to the dangerous nature of the goods;
- (2) Name and principal place of business of the carrier;
- (3) Name of the ship;
- (4) Name of the shipper;
- (5) Name of the consignee;
- (6) Port of loading and the date on which the goods were taken over by the carrier at the port of loading;
- (7) Port of discharge;
- (8) Place where the goods were taken over and the place where the goods are to be delivered in case of a multimodal transport bill of lading;
- (9) Date and place of issue of the bill of lading and the number of originals issued;
- (10) Payment of freight;
- (11) Signature of the carrier or of a person acting on his behalf.

In a bill of lading, the lack of one or more particulars referred to in the preceding paragraph does not affect the function of the bill of lading as such, provided that it nevertheless meets the requirements set forth in Article 71 of this Code.

Article 74 If the carrier has issued, on demand of the shipper, a received-for-shipment bill of lading or other similar documents before the goods are loaded on board, the shipper may surrender the same to the carrier as against a shipped bill of lading when the goods have been loaded on board. The carrier may also note on the received-for-shipment bill of lading or other similar documents with the name of the carrying ship and the date of loading, and, when so noted, the received-for-shipment bill of lading or other similar documents shall be deemed to constitute a shipped bill of lading.

Article 75 If the bill of lading contains particulars concerning the description, mark, number of packages or pieces, weight or quantity of the goods with respect to which the carrier or the other person issuing the bill of lading on his behalf has the knowledge or reasonable grounds to suspect that such particulars do not accurately represent the goods actually received, or, where a shipped bill of lading is issued, loaded, or if he has had no reasonable means of checking, the carrier or such other person may make a note in the bill of lading specifying those inaccuracies, the grounds for suspicion or the lack of reasonable means of checking.

Article 76 If the carrier or the other person issuing the bill of lading on his behalf made no note in the bill of lading regarding the apparent order and condition of the goods, the goods shall be deemed to be in apparent good order and condition.

Article 77 Except for the note made in accordance with the provisions of Article 75 of this Code, the bill of lading issued by the carrier or the other person acting on his behalf is prima facie evidence of the taking over or loading by the carrier of the goods as described therein. Proof to the contrary by the carrier shall not be admissible if the bill of lading has been transferred to a third party, including a consignee, who has acted in good faith in reliance on the description of the goods contained therein.

Article 78 The relationship between the carrier and the holder of the bill of lading with respect to their rights and obligations shall be defined by the clauses of the bill of lading.

Neither the consignee nor the holder of the bill of lading shall be liable for the demurrage, dead freight and all other expenses in respect of loading occurred at the loading port unless the bill of lading clearly states that the aforesaid demurrage, dead freight and all other expenses shall be borne by the consignee and the holder of the bill of lading.

Article 79 The negotiability of a bill of lading shall be governed by the following provisions:

- (1) A straight bill of lading is not negotiable;
- (2) An order bill of lading may be negotiated with endorsement to order or endorsement in blank;
- (3) A bearer bill of lading is negotiable without endorsement.

Article 80 Where a carrier has issued a document other than a bill of lading as an evidence of the receipt of the goods to be carried, such a document is prima facie evidence of the conclusion of the contract of carriage of goods by sea and the taking over by the carrier of the goods as described therein.

Such documents that are issued by the carrier shall not be negotiable.

## Section 5 Delivery of Goods

Article 81 Unless notice of loss or damage is given in writing by the consignee to the carrier at the time of delivery of the goods by the carrier to the consignee, such delivery shall be deemed to be prima facie evidence of the delivery of the goods by the carrier as described in the transport documents and of the apparent good order and condition of such goods.

Where the loss of or damage to the goods is not apparent, the provisions of the preceding paragraph shall apply if the consignee has not given the notice in writing within 7 consecutive days from the next day of the delivery of the goods, or, in the case of containerized goods, within 15 days from the next day of the delivery thereof.

The notice in writing regarding the loss or damage need not be given if the state of the goods has, at the time of delivery, been the subject of a joint survey or inspection by the carrier and the consignee.

Article 82 The carrier shall not be liable for compensation if no notice on the economic losses resulting from delay in delivery of the goods has been received from the consignee within 60 consecutive days from the next day on which the goods had been delivered by the carrier to the consignee.

Article 83 The consignee may, before taking delivery of the goods at the port of destination, and the carrier may, before delivering the goods at the port of destination, request the cargo inspection agency to have the goods inspected. The party requesting such inspection shall bear the cost thereof but is entitled to recover the same from the party causing the damage.

Article 84 The carrier and the consignee shall mutually provide reasonable facilities for the survey and inspection stipulated in Articles 81 and 83 of this Code.

Article 85 Where the goods have been delivered by the actual carrier, the notice in writing given by the consignee to the actual carrier under Article 81 of this Code shall have the same effect as that given to the carrier, and that given to the carrier shall have the same effect as that given to the actual carrier.

Article 86 If the goods were not taken delivery of at the port of discharge or if the consignee has delayed or refused the taking delivery of the goods, the Master may discharge the goods into warehouses or other appropriate places, and any expenses or risks arising therefrom shall be borne by the consignee.

Article 87 If the freight, contribution in general average, demurrage to be paid to the carrier and other necessary charges paid by the carrier on behalf of the owner of the goods as well as other charges to be paid to the carrier have not been paid in full, nor has appropriate security been given, the carrier may have a lien, to a reasonable extent, on the goods.

Article 88 If the goods under lien in accordance with the provisions of Article 87 of this Code have not been taken delivery of within 60 days from the next day of the ship's arrival at the port of discharge, the carrier may apply to the court for an order on selling the goods by auction; where the goods are perishable or the expenses for keeping such goods would exceed their value, the carrier may apply for an earlier sale by auction.

The proceeds from the auction sale shall be used to pay off the expenses for the storage and auction sale of the goods, the freight and other related charges to be paid to the carrier. If the proceeds fall short of such expenses, the carrier is entitled to claim the difference from the shipper, whereas any amount in surplus shall be refunded to the shipper. If there is no way to make the

refund and such surplus amount has not been claimed at the end of one full year after the auction sale, it shall go to the State Treasury.

## Section 6 Cancellation of Contract

Article 89 The shipper may request the cancellation of the contract of carriage of goods by sea before the ship sails from the port of loading. However, except as otherwise provided for in the contract, the shipper shall in this case pay half of the agreed amount of freight; if the goods have already been loaded on board, the shipper shall bear the expenses for the loading and discharge and other related charges.

Article 90 Either the carrier or the shipper may request the cancellation of the contract and neither shall be liable to the other if, due to force majeure or other causes not attributable to the fault of the carrier or the shipper, the contract could not be performed prior to the ship's sailing from its port of loading. If the freight has already been paid, it shall be refunded to the shipper, and, if the goods have already been loaded on board, the loading/discharge expenses shall be borne by the shipper. If a bill of lading has already been issued, it shall be returned by the shipper to the carrier.

Article 91 If, due to force majeure or any other causes not attributable to the fault of the carrier or the shipper, the ship could not discharge its goods at the port of destination as provided for in the contract of carriage, unless the contract provides otherwise, the Master shall be entitled to discharge the goods at a safe port or place near the port of destination and the contract of carriage shall be deemed to have been fulfilled.

In deciding the discharge of the goods, the Master shall inform the shipper or the consignee and shall take the interests of the shipper or the consignee into consideration.

## Section 7 Special Provisions Regarding Voyage Charter Party

Article 92 A voyage charter party is a charter party under which the shipowner charters out and the charterer charters in the whole or part of the ship's space for the carriage by sea of the intended goods from one port to another and the charterer pays the agreed amount of freight.

Article 93 A voyage charter party shall mainly contain, inter alia, name of the shipowner, name of the charterer, name and nationality of the ship, its bale or grain capacity, description of the goods to be loaded, port of loading, port of destination, laydays, time for loading and discharge, payment of freight, demurrage, dispatch and other relevant matters.

Article 94 The provisions in Article 47 and Article 49 of this Code shall apply to the shipowner under voyage charter party.

The other provisions in this Chapter regarding the rights and obligations of the parties to the contract shall apply to the shipowner and the charterer under voyage charter only in the absence of relevant provisions or in the absence of provisions differing therefrom in the voyage charter.

Article 95 Where the holder of the bill of lading is not the charterer in the case of a bill of lading issued under a voyage charter, the rights and obligations of the carrier and the holder of the bill of lading shall be governed by the clauses of the bill of lading. However, if the clauses of the voyage



charter party are incorporated into the bill of lading, the relevant clauses of the voyage charter party shall apply.

Article 96 The shipowner shall provide the intended ship. The intended ship may be substituted with the consent of the charterer. However, if the ship substituted does not meet the requirements of the charter party, the charterer may reject the ship or cancel the charter. Should any damage or loss occur to the charterer as a result of the shipowner's failure in providing the intended ship due to his fault, the shipowner shall be liable for compensation.

Article 97 If the shipowner has failed to provide the ship within the laydays fixed in the charter, the charterer is entitled to cancel the charter party. However, if the shipowner had notified the charterer of the delay of the ship and the expected date of its arrival at the port of loading, the charterer shall notify the shipowner whether to cancel the charter within 48 hours of the receipt of the shipowner's notification.

Where the charterer has suffered losses as a result of the delay in providing the ship due to the fault of the shipowner, the shipowner shall be liable for compensation .

Article 98 Under a voyage charter, the time for loading and discharge and the way of calculation thereof, as well as the rate of demurrage that would incur after the expiration of the laytime and the rate of dispatch money to be paid as a result of the completion of loading or discharge ahead of schedule, shall be fixed by the shipowner and the charterer upon mutual agreement.

Article 99 The charterer may sublet the ship he chartered, but the rights and obligations under the head charter shall not be affected.

Article 100 The charterer shall provide the intended goods, but he may replace the goods with the consent of the shipowner. However, if the goods replaced are detrimental to the interests of the shipowner, the shipowner shall be entitled to reject such goods and cancel the charter.

Where the shipowner has suffered losses as a result of the failure of the charterer in providing the intended goods, the charterer shall be liable for compensation.

Article 101 The shipowner shall discharge the goods at the port of discharge specified in the charter party. Where the charter party contains a clause allowing the choice of the port of discharge by the charterer, the Master may choose one from among the agreed picked ports to discharge the goods, in case the charterer did not, as agreed in the charter, instruct in time as to the port chosen for discharging the goods. Where the charterer did not instruct in time as to the chosen port of discharge, as agreed in the charter, and the shipowner suffered losses thereby, the charterer shall be liable for compensation; where the charterer has suffered losses as a result of the shipowner's arbitrary choice of a port to discharge the goods, in disregard of the provisions in the relevant charter, the shipowner shall be liable for compensation.

## Section 8 Special Provisions Regarding Multimodal Transport Contract

Article 102 A multimodal transport contract as referred to in this Code means a contract under which the multimodal transport operator undertakes to transport the goods, against the payment of freight for the entire transport, from the place where the goods were received in his charge to

the destination and to deliver them to the consignee by two or more different modes of transport, one of which being sea carriage.

The multimodal transport operator as referred to in the preceding paragraph means the person who has entered into a multimodal transport contract with the shipper either by himself or by another person acting on his behalf.

Article 103 The responsibility of the multimodal transport operator with respect to the goods under multimodal transport contract covers the period from the time he takes the goods in his charge to the time of their delivery.

Article 104 The multimodal transport operator shall be responsible for the performance of the multimodal transport contract or the procurement of the performance therefore, and shall be responsible for the entire transport.

The multimodal transport operator may enter into separate contracts with the carriers of the different modes defining their responsibilities with regard to the different sections of the transport under the multimodal transport contracts. However, such separate contracts shall not affect the responsibility of the multimodal transport operator with respect to the entire transport.

Article 105 If loss of or damage to the goods has occurred in a certain section of the transport, the provisions of the relevant laws and regulations governing that specific section of the multimodal transport shall be applicable to matters concerning the liability of the multimodal transport operator and the limitation thereof.

Article 106 If the section of transport in which the loss of or damage to the goods occurred could not be ascertained, the multimodal transport operator shall be liable for compensation in accordance with the stipulations regarding the carrier's liability and the limitation thereof as set out in this Chapter.

## Chapter V Contract of Carriage of Passengers by Sea

Article 107 A contract of carriage of passengers by sea is a contract whereby the carrier undertakes to carry passengers and their luggage by sea from one port to another by ships suitable for that purpose against payment of fare by the passengers.

Article 108 For the purposes of this Chapter:

- (1) "Carrier" means the person by whom or in whose name a contract of carriage of passengers by sea has been entered into with the passengers;
- (2) "Actual carrier" means the person by whom the whole or part of the carriage of passengers has been performed as entrusted by the carrier, including those engaged in such carriage under a sub-contract.

(3) "Passenger" means a person carried under a contract of carriage of passengers by sea. With the consent of the carrier, a person supervising the carriage of goods aboard a ship covered by a contract of carriage of goods is regarded as a passenger;

(4) "Luggage" means any article or vehicle shipped by the carrier under the contract of carriage of passengers by sea, with the exception of live animals.

(5) "Cabin luggage" means the luggage which the passenger has in his cabin or is otherwise in his possession, custody or control.

Article 109 The provisions regarding the responsibilities of the carrier as contained in this Chapter shall be applicable to the actual carrier, and the provisions regarding the responsibilities of the servant or agent of the carrier as contained in this Chapter shall be applicable to the servant or agent of the actual carrier.

Article 110 The passage ticket serves as an evidence that a contract of carriage of passengers by sea has been entered into.

Article 111 The period of carriage for the carriage of passengers by sea commences from the time of embarkation of the passengers and terminates at the time of their disembarkation, including the period during which the passengers are transported by water from land to the ship or vice versa , if such cost of transport is included in the fare. However, the period of carriage does not include the time when the passengers are at a marine terminal or station or on a quay or in or on any other port installations.

The period of carriage for the cabin luggage of the passengers shall be the same as that stipulated in the preceding paragraph. The period of carriage for luggage other than the cabin luggage commences from the time when the carrier or his servant or agent receives it into his charge and terminates at the time when the carrier or his servant or agent redelivers it to the passengers.

Article 112 A passenger travelling without a ticket or taking a higher class berth than booked or going beyond the distance paid for shall pay for the fare or the excess fare as required by relevant regulations, and the carrier may, according to the relevant regulations, charge additional fare. Should any passenger refuse to pay, the Master is entitled to order him to disembark at a suitable place and the carrier has the right of recourse against him.

Article 113 No passenger may take on board or pack in their luggage contraband goods or any article of an inflammable, explosive, poisonous, corrosive or radioactive nature or other dangerous goods that would endanger the safety of life and property on board.

The carrier may have the contraband or dangerous goods brought on board by the passenger or packed in his luggage in breach of the provisions of the preceding paragraph discharged, destroyed or rendered innocuous at any time and at any place or sent over to the appropriate authorities, without being liable for compensation.

The passenger shall be liable for compensation if any loss or damage occurs as a result of his breach of the provisions of paragraph 1 of this Article.

Article 114 During the period of carriage of the passengers and their luggage as provided for in Article 111 of this Code, the carrier shall be liable for the death of or personal injury to passengers or the loss of or damage to their luggage resulting from accidents caused by the fault of the carrier or his servant or agent committed within the scope of his employment or agency.

The claimant shall bear the burden of proof regarding the fault of the carrier or his servant or agent, with the exception, however, of the circumstances specified in paragraphs 3 and 4 of this Article.

If the death of or personal injury to the passengers or loss of or damage to the passengers' cabin luggage occurred as a result of shipwreck, collision, stranding, explosion, fire or the defect of the ship, it shall be presumed that the carrier or his servant or agent has committed a fault, unless proof to the contrary has been given by the carrier or his servant or agent.

As to any loss of or damage to the luggage other than the passenger's cabin luggage, unless the carrier or his servant or agent proves to the contrary, it shall be presumed that the carrier or his servant or agent has committed a fault, no matter how the loss or damage was caused.

Article 115 If it is proved by the carrier that the death of or personal injury to the passenger or the loss of or damage to his luggage was caused by the fault of the passenger himself or the faults of the carrier and the passenger combined, the carrier's liability may be exonerated or appropriately mitigated.

If it is proved by the carrier that the death of or personal injury to the passenger or the loss of or damage to the passenger's luggage was intentionally caused by the passenger himself, or the death or personal injury was due to the health condition of his, the carrier shall not be liable therefore.

Article 116 The carrier shall not be liable for any loss of or damage to the monies, gold, silver, jewellery, negotiable securities or other valuables of the passengers.

If the passenger has entrusted the above-mentioned valuables to the safe-keeping of the carrier under an agreement for that purpose, the carrier shall be liable for compensation in accordance with the provisions of Article 117 of this Code. Where the limitation of liability agreed upon between the carrier and the passenger in writing is higher than that set out in Article 117 of this Code, the carrier shall make the compensation in accordance with that higher amount.

Article 117 Except the circumstances specified in paragraph 4 of this Article, the limitation of liability of the carrier under each carriage of passengers by sea shall be governed by the following:

- (1) For death of or personal injury to the passenger: not exceeding 46,666 Units of Account per passenger;
- (2) For loss of or damage to the passengers' cabin luggage: not exceeding 833 Units of Account per passenger;
- (3) For loss of or damage to the passengers' vehicles including the luggage carried therein: not exceeding 3,333 Units of Account per vehicle;
- (4) For loss of or damage to luggage other than those described in sub-paragraphs (2) and (3) above: not exceeding 1,200 Units of Account per passenger.

An agreement may be reached between the carrier and the passengers with respect to the deductibles applicable to the compensation for loss of or damage to the passengers' vehicles and luggage other than their vehicles. However, the deductible with respect to the loss of or damage to the passengers' vehicles shall not exceed 117 Units of Account per vehicle, whereas the deductible for the loss of or damage to the luggage other than the vehicle shall not exceed 13 Units of Account per piece of luggage per passenger. In calculating the amount of compensation for the loss of or damage to the passenger's vehicle or the luggage other than the vehicle, deduction shall be made of the agreed deductibles the carrier is entitled to.

A higher limitation of liability than that set out in sub-paragraph (1) above may be agreed upon between the carrier and the passenger in writing.

The limitation of liability of the carrier with respect to the carriage of passengers by sea between the ports of the People's Republic of China shall be fixed by the competent authorities of transport and communications under the State Council and implemented after its being submitted to and approved by the State Council.

Article 118 If it is proved that the death of or personal injury to the passenger or the loss of or damage to the passenger's luggage resulted from an act or omission of the carrier done with the intent to cause such loss or damage or recklessly and with knowledge that such death or personal injury or such loss or damage would probably result, the carrier shall not invoke the provisions regarding the limitation of liability contained in Articles 116 and 117 of this Code.

If it is proved that the death of or personal injury to the passenger or the loss of or damage to the passenger's luggage resulted from an act or omission of the servant or agent of the carrier done with the intent to cause such loss or damage or recklessly and with knowledge that such death or personal injury or such loss or damage would probably result, the servant or agent of the carrier shall not invoke the provisions regarding the limitation of liability contained in Articles 116 and 117 of this Code.

Article 119 In case of apparent damage to the luggage, the passenger shall notify the carrier or his servant or agent in writing according to the following:

- (1) Notice with respect to cabin luggage shall be made before or at the time of his embarkation;
- (2) Notice regarding luggage other than cabin luggage shall be made before or at the time of redelivery thereof.

If the damage to the luggage is not apparent and it is difficult for the passenger to discover such damage at the time of his disembarkation or of the redelivery of the luggage, or if the luggage has been lost, the passenger shall notify the carrier or his servant or agent in writing within 15 days from the next day of disembarkation of the passenger or of the redelivery of the luggage.

If the passenger fails to send in the notice in writing in time in accordance with the provisions of sub-paragraphs (1) and (2) of this Article, it shall be presumed that the luggage has been received undamaged, unless proof to the contrary is made.

Where the luggage has been jointly surveyed or inspected by the passenger and the carrier at the time of redelivery thereof, the above-mentioned notice need not be given.

Article 120 With regard to the claims made to the carrier's servant or agent, such servant or agent shall be entitled to invoke the provisions regarding defence and limitation of liability contained in Articles 115, 116 and 117 of this Code if such servant or agent proves that his act or omission was within the scope of his employment or agency.

Article 121 Where the performance of the carriage of passengers or part thereof has been entrusted by the carrier to an actual carrier, the carrier shall, as stipulated in this Chapter, remain liable for the entire carriage. Where the carriage is performed by the actual carrier, the carrier shall be liable for the act or omission of the actual carrier or the act or omission of his servant or agent within the scope of his employment or agency.

Article 122 Any special agreement under which the carrier assumes obligations not provided for in this Chapter or waives the rights conferred by this Chapter shall be binding upon the actual carrier where the actual carrier has expressly agreed in writing to the contents thereof. Such a special agreement shall be binding upon the carrier whether the actual carrier has agreed to its contents or not.

Article 123 Where both the carrier and the actual carrier are liable for compensation, they shall be liable jointly and severally within the scope of such liability.

Article 124 Where separate claims have been brought against the carrier, the actual carrier and their servants or agents with respect to the death of or personal injury to the passengers or the loss of or damage to their luggage, the aggregate amount of compensation shall not be in excess of the limitation prescribed in Article 117 of this Code.

Article 125 The provisions of Articles 121 through 124 of this Code shall not affect the right of recourse between the carrier and the actual carrier.

Article 126 Any of the following clauses contained in a contract of carriage of passengers by sea shall be null and void:

- (1) Any clause that exonerates the statutory responsibility of the carrier in respect of the passenger;
- (2) Any clause that reduces the limitation of liability of the carrier as contained in this Chapter;
- (3) Any clause that contains provisions contrary to those of this Chapter concerning burden of proof; and
- (4) Any clause that restricts the right of claim of the passenger.

The nullity and voidness of the clauses set out in the preceding paragraph shall not prejudice the validity of the other clauses of the contract.

## Chapter VI Charter Parties

### Section 1 Basic Principles

Article 127 The provisions concerning the rights and obligations of the shipowner and the charterer in this Chapter shall apply only when there are no stipulations or no different stipulations in this regard in the charter party.

Article 128 Charter parties including time charter parties and bareboat charter parties shall be concluded in writing.

## Section 2 Time Charter Party

Article 129 A time charter party is a contract under which the shipowner provides a designated manned ship to the charterer, and the charterer employs the ship during the contractual period for the agreed service against payment of hire.

Article 130 A time charter party mainly contains the name of the shipowner, the name of the charterer; the name, nationality, class, tonnage, capacity, speed and fuel consumption of the ship; the trading area; the agreed service, the contractual period, the time, place and conditions of delivery and redelivery of the ship; the hire and the way of its payment and other relevant matters.

Article 131 The shipowner shall deliver the ship within the time agreed upon in the charter party.

Where the shipowner acts against the provisions of the preceding paragraph, the charterer is entitled to cancel the charter. However, if the shipowner has notified the charterer of the anticipated delay in delivery and has given an estimated time of arrival of the ship at the port of delivery, the charterer shall notify the shipowner, within 48 hours of the receipt of such notice from the shipowner, of his decision whether to cancel the charter or not.

The shipowner shall be liable for the charterer's loss resulting from the delay in delivery of the ship due to the shipowner's fault.

Article 132 At the time of delivery, the shipowner shall exercise due diligence to make the ship seaworthy. The ship delivered shall be fit for the intended service.

Where the shipowner acts against the provisions in the preceding paragraph, the charterer shall be entitled to cancel the charter and claim any losses resulting therefrom.

Article 133 During the charter period, if the ship is found at variance with the seaworthiness or the other conditions agreed upon in the charter, the shipowner shall take all reasonable measures to have them restored as soon as possible.

Where the ship has not been operated normally for 24 consecutive hours due to its failure to maintain the seaworthiness or the other conditions as agreed upon, the charterer shall not pay the hire for the operating time so lost, unless such failure was caused by the charterer.

Article 134 The charterer shall guarantee that the ship shall be employed in the agreed maritime transport between the safe ports or places within the trading area agreed upon.

If the charterer acts against the provisions of the preceding paragraph, the shipowner is entitled to cancel the charter and claim any losses resulting therefrom.

Article 135 The charterer shall guarantee that the ship shall be employed to carry the lawful merchandise agreed.

Where the ship is to be employed by the charterer to carry live animals or dangerous goods, a prior consent of the shipowner is required.

The charterer shall be liable for any loss of the shipowner resulting from the charterer's violation of the provisions of paragraph 1 or paragraph 2 of this Article.

Article 136 The charterer shall be entitled to give the Master instructions with respect to the operation of the ship. However, such instructions shall not be inconsistent with the stipulations of the time charter.

Article 137 The charterer may sublet the ship under charter, but he shall notify the shipowner of the sublet in time. The rights and obligations agreed upon in the head charter shall not be affected by the sub-charter.

Article 138 Where the ownership of the ship under charter has been transferred by the shipowner, the rights and obligations agreed upon under the original charter shall not be affected. However, the shipowner shall inform the charterer thereof in time. After such transfer, the transferee and the charterer shall continue to perform the original charter.

Article 139 Should the ship be engaged in salvage operations during the charter period, the charterer shall be entitled to half of the amount of the payment for salvage operations after deducting therefrom the salvage expenses, compensation for damage, the portion due to crew members and other relevant costs.

Article 140 The charterer shall pay the hire as agreed upon in the charter. Where the charterer fails to pay the hire as agreed upon, the shipowner shall be entitled to cancel the charter party and claim any losses resulting therefrom.

Article 141 In case the charterer fails to pay the hire or other sums of money as agreed upon in the charter, the shipowner shall have a lien on the charterer's goods, other property on board and earnings from the sub-charter.

Article 142 When the charterer redelivers the ship to the shipowner, the ship shall be in the same good order and condition as it was at the time of delivery, fair wear and tear excepted.

Where, upon redelivery, the ship fails to remain in the same good order and condition as it was at the time of delivery, the charterer shall be responsible for rehabilitation or for compensation.

Article 143 If, on the basis of a reasonable calculation, a ship may be able to complete its last voyage at around the time of redelivery specified in the charter and probably thereafter, the charterer is entitled to continue to use the ship in order to complete that voyage even if its time of redelivery will be overdue. During the extended period, the charterer shall pay the hire at the rate fixed by the charter, and, if the current market rate of hire is higher than that specified in the charter, the charterer shall pay the hire at the current market rate.

### Section 3 Bareboat Charter Party



Article 144 A bareboat charter party is a charter party under which the shipowner provides the charterer with an unmanned ship which the charterer shall possess, employ and operate within an agreed period and for which the charterer shall pay the shipowner the hire.

Article 145 A bareboat charter party mainly contains the name of the shipowner and the name of the charterer; the name, nationality, class, tonnage and capacity of the ship; the trading area, the employment of the ship and the charter period; the time, place and condition of delivery and redelivery; the survey, maintenance and repair of the ship; the hire and its payment; the insurance of the ship; the time and condition for the termination of the charter and other relevant matters.

Article 146 The shipowner shall deliver the ship and its certificates to the charterer at the port or place and time as stipulated in the charter party. At the time of delivery, the shipowner shall exercise due diligence to make the ship seaworthy. The ship delivered shall be fit for the agreed service.

Where the shipowner acts against the provisions of the preceding paragraph, the charterer shall be entitled to cancel the charter and claim any losses resulting therefrom.

Article 147 The charterer shall be responsible for the maintenance and repair of the ship during the bareboat charter period.

Article 148 During the bareboat charter period, the ship shall be insured, at the value agreed upon in the charter and in the way consented to by the shipowner, by the charterer at his expense.

Article 149 During the bareboat charter period, if the charterer's possession, employment or operation of the ship has affected the interests of the shipowner or caused any losses thereto, the charterer shall be liable for eliminating the harmful effect or compensating for the losses.

Should the ship be arrested due to any disputes over its ownership or debts owed by the shipowner, the shipowner shall guarantee that the interest of the charterer is not affected. The shipowner shall be liable for compensation for any losses suffered by the charterer thereby.

Article 150 During the bareboat charter period, the charterer shall not assign the rights and obligations stipulated in the charter or sublet the ship under bareboat charter without the shipowners's consent in writing.

Article 151 The shipowner shall not establish any mortgage of the ship during the bareboat charter period without the prior consent in writing by the charterer.

Where the shipowner acts against the provisions of the preceding paragraph and thereby causes losses to the charterer, the shipowner shall be liable for compensation.

Article 152 The charterer shall pay the hire as stipulated in the charter. In default of payment by the charterer for seven consecutive days or more after the time as agreed in the charter for such payment, the shipowner is entitled to cancel the charter without prejudice to any claim for the loss arising from the charterer's default.

Should the ship be lost or missing, payment of hire shall cease from the day when the ship was lost or last heard of. Any hire paid in advance shall be refunded in proportion.

Article 153 The provisions of Article 134, paragraph 1 of Article 135, Article 142 and Article 143 of this Code shall be applicable to bareboat charter parties.

Article 154 The ownership of a ship under bareboat charter containing a lease-purchase clause shall be transferred to the charterer when the charterer has paid off the lease-purchase price to the shipowner as stipulated in the charter.

## Chapter VII Contract of Sea Towage

Article 155 A contract of sea towage is a contract whereby the tugowner undertakes to tow an object by sea with a tug from one place to another and the tow party pays the towage.

The provisions of this Chapter shall not be applicable to the towage service rendered to ships within the port area.

Article 156 A contract of sea towage shall be made in writing. Its contents shall mainly include name and address of the tugowner, name and address of the tow party, name and main particulars of the tug and name and main particulars of the object to be towed, horse power of the tug, place of commencement of the towage and the destination, the date of commencement of the towage, towage price and the way of payment thereof, as well as other relevant matters.

Article 157 The tugowner shall, before and at the beginning of the towage, exercise due diligence to make the tug seaworthy and towworthy and to properly man the tug and equip it with gears and tow lines and to provide all other necessary supplies and appliances for the intended voyage.

The tow party shall, before and at the beginning of the towage, make all necessary preparations therefore and shall exercise due diligence to make the object to be towed towworthy and shall give a true account of the object to be towed and provide the certificate of towworthiness and other documents issued by the relevant survey and inspection organizations.

Article 158 If before the commencement of the towage service, due to force majeure or other causes not attributable to the fault of either party, the towage contract could not be performed, either party may cancel the contract and neither shall be liable to the other. In such event, the towage price that had already been paid shall be returned to the tow party by the tugowner, unless otherwise agreed upon in the towage contract.

Article 159 If after the commencement of the towage service, due to force majeure or other causes not attributable to the fault of either party, the towage contract could not be performed, either party may cancel the towage contract and neither shall be liable to the other.

Article 160 Where the object towed could not reach its destination due to force majeure or other causes not attributable to the fault of either party, unless the towage contract provides otherwise, the tugowner may deliver the object towed to the tow party or its agent at a place near the destination or at a safe port or an anchorage chosen by the Master of the tug, and the contract of towage shall be deemed to have been fulfilled.

Article 161 Where the tow party fails to pay the towage price or other reasonable expenses as agreed, the tugowner shall have a lien on the object towed.

Article 162 In the course of the sea towage, if the damage suffered by the tugowner or the tow party was caused by the fault of one of the parties, the party in fault shall be liable for compensation. If the damage was caused by the faults of both parties, both parties shall be liable for compensation in proportion to the extent of their respective faults.

Notwithstanding the provisions of the preceding paragraph, the tugowner shall not be liable if he proves that the damage suffered by the tow party is due to one of the following causes:

- (1) Fault of the Master or other crew members of the tug or the pilot or other servants or agents of the tugowner in the navigation and management of the tug;
- (2) Fault of the tug in saving or attempting to save life or property at sea.

The provisions of this Article shall only apply if and when there are no provisions or no different provisions in this regard in the sea towage contract.

Article 163 If death of or personal injury to a third party or damage to property thereof has occurred during the sea towage due to the fault of the tugowner or the tow party, the tugowner and the tow party shall be liable jointly and severally to that third party. Except as otherwise provided for in the towage contract, the party that has jointly and severally paid a compensation in an amount exceeding the proportion for which it is liable shall have the right of recourse against the other party.

Article 164 Where a tugowner towing a barge owned or operated by him to transport goods by sea from one port to another, it shall be deemed as an act of carriage of goods by sea.

## Chapter VIII Collision of Ships

Article 165 Collision of ships means an accident arising from the touching of ships at sea or in other navigable waters adjacent thereto.

Ships referred to in the preceding paragraph shall include those non-military or public service ships or craft that collide with the ships mentioned in Article 3 of this Code.

Article 166 After a collision, the Master of each of the ships in collision is bound, so far as he can do so without serious danger to his ship and persons on board to render assistance to the other ship and persons on board.

The Masters of each of the ships in collision is likewise bound so far as possible to make known to the other ship the name of his ship, its port of registry, port of departure and port of destination.

Article 167 Neither of the parties shall be liable to the other if the collision is caused by force majeure or other causes not attributable to the fault of either party or if the cause thereof is left in doubt.

Article 168 If the collision is caused by the fault of one of the ships, the one in fault shall be liable therefore.

Article 169 If the colliding ships are all in fault, each ship shall be liable in proportion to the extent of its fault; if the respective faults are equal in proportion or it is impossible to determine the extent of the proportion of the respective faults, the liability of the colliding ships shall be apportioned equally.

The ships in fault shall be liable for the damage to the ship, the goods and other property on board pursuant to the proportions prescribed in the preceding paragraph. Where damage is caused to the property of a third party, the liability for compensation of any of the colliding ships shall not exceed the proportion it shall bear.

If the ships in fault have caused loss of life or personal injury to a third party, they shall be jointly and severally liable therefore. If a ship has paid an amount of compensation in excess of the proportion prescribed in paragraph 1 of this Article, it shall have the right of recourse against the other ship(s) in fault.

Article 170 Where a ship has caused damage to another ship and persons, goods or other property on board that ship, either by the execution or non-execution of a manoeuvre or by the non-observance of navigation regulations, even if no collision has actually occurred, the provisions of this Chapter shall apply.

## Chapter IX Salvage at Sea

Article 171 The provisions of this Chapter shall apply to salvage operations rendered at sea or any other navigable waters adjacent thereto to ships and other property in distress.

Article 172 For the purposes of this Chapter:

(1) "Ship" means any ship referred to in Article 3 of this Code and any other non-military, public service ship or craft that has been involved in a salvage operation therewith;

(2) "Property" means any property not permanently and intentionally attached to the shoreline and includes freight at risk;

(3) "Payment" means any reward, remuneration or compensation for salvage operations to be paid by the salvaged party to the salvor pursuant to the provisions of this Chapter.

Article 173 The provisions of this Chapter shall not apply to fixed or floating platforms or mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources.

Article 174 Every Master is bound, so far as he can do so without serious danger to his ship and persons on board, to render assistance to any person in danger of being lost at sea.

Article 175 A contract for salvage operations at sea is concluded when an agreement has been reached between the salvor and the salvaged party regarding the salvage operations to be undertaken.

The Master of the ship in distress shall have the authority to conclude a contract for salvage operations on behalf of the shipowner. The Master of the ship in distress or its owner shall have the authority to conclude a contract for salvage operations on behalf of the owner of the property on board.

Article 176 The salvage contract may be modified by a judgment of the court which has entertained the suit brought by either party, or modified by an award of the arbitration organization to which the dispute has been submitted for arbitration upon the agreement of the parties, under any of the following circumstances:

- (1) The contract has been entered into under undue influence or the influence of danger and its terms are obviously inequitable;
- (2) The payment under the contract is in an excessive degree too large or too small for the services actually rendered.

Article 177 During the salvage operation, the salvor shall owe a duty to the salvaged party to:

- (1) carry out the salvage operation with due care;
- (2) exercise due care to prevent or minimize the pollution damage to the environment;
- (3) seek the assistance of other salvors where reasonably necessary;
- (4) accept the reasonable request of the salvaged party to seek the participation in the salvage operation of other salvors. However, if the request is not well-founded, the amount of payment due to the original salvor shall not be affected.

Article 178 During the salvage operation, the party salvaged is under an obligation to the salvor to:

- (1) cooperate fully with the salvor;
- (2) exercise due care to prevent or minimize the pollution damage to the environment;
- (3) promptly accept the request of the salvor to take delivery of the ship or property salvaged when such ship or property has been brought to a place of safety.

Article 179 Where the salvage operations rendered to the distressed ship and other property have had a useful result, the salvor shall be entitled to a reward. Except as otherwise provided for by

Article 182 of this Code or by other laws or the salvage contract, the salvor shall not be entitled to the payment if the salvage operations have had no useful result.

Article 180 The reward shall be fixed with a view to encouraging salvage operations, taking into full account the following criteria:

- (1) Value of the ship and other property salvaged;
- (2) Skill and efforts of the salvors in preventing or minimizing the pollution damage to the environment;
- (3) Measure of success obtained by the salvors;
- (4) Nature and extent of the danger;
- (5) Skill and efforts of the salvors in salvaging the ship, other property and life;
- (6) Time used and expenses and losses incurred by the salvors;
- (7) Risk of liability and other risks run by the salvors or their equipment;
- (8) Promptness of the salvage services rendered by the salvors;
- (9) Availability and use of ships or other equipment intended for salvage operations;
- (10) State of readiness and efficiency of the salvor's equipment and the value thereof.

The reward shall not exceed the value of the ship and other property salvaged.

Article 181 The salvaged value of the ship and other property means the assessed value of the ship and other property salvaged or the proceeds of the sale thereof, after deduction of the relevant taxes and customs dues, quarantine expenses, inspection charges as well as expenses incurred in connection with the discharge, storage, assessment of the value and the sale thereof.

The value prescribed in the preceding paragraph does not include the value of the salvaged personal belongings of the crew and that of the cabin luggage of the passengers.

Article 182 If the salvor has carried out the salvage operations in respect of a ship which by itself or its goods threatened pollution damage to the environment and has failed to earn a reward under Article 180 of this Code at least equivalent to the special compensation assessable in accordance with this Article, he shall be entitled to special compensation from the owner of that ship equivalent to his expenses as herein defined.

If the salvor has carried out the salvage operations prescribed in the preceding paragraph and has prevented or minimized pollution damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 of this Article may be increased by an amount up to a maximum of 30% of the expenses incurred by the salvor. The court which has entertained the suit or the arbitration organization may, if it deems fair and just and taking into consideration the provisions of paragraph 1 of Article 180 of this Code, render a judgment or an award further

increasing the amount of such special compensation, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.

The salvor's expenses referred to in this Article means the salvor's out-of-pocket expenses reasonably incurred in the salvage operation and the reasonable expenses for the equipment and personnel actually used in the salvage operation. In determining the salvor's expenses, the provisions of sub-paragraphs (8), (9) and (10) of paragraph 1 of Article 180 of this Code shall be taken into consideration.

Under all circumstances, the total special compensation provided for in this Article shall be paid only if such compensation is greater than the reward recoverable by the salvor under Article 180 of this Code, and the amount to be paid shall be the difference between the special compensation and the reward.

If the salvor has been negligent and has thereby failed to prevent or minimize the pollution damage to the environment, the salvor may be totally or partly deprived of the right to the special compensation.

Nothing in this Article shall affect the right of recourse on the part of the shipowner against any other parties salvaged.

Article 183 The salvage reward shall be paid by the owners of the salvaged ship and other property in accordance with the respective proportions which the salvaged values of the ship and other property bear to the total salvaged value.

Article 184 The distribution of salvage reward among the salvors taking part in the same salvage operation shall be made by agreement among such salvors on the basis of the criteria set out in Article 180 of this Code; failing such agreement, the matter may be brought before the court hearing the case for judgment, or, upon the agreement of the parties, submitted to the arbitration organization for an award.

Article 185 The salvors of human life may not demand any remuneration from those whose lives are saved. However, salvors of human life are entitled to a fair share of the payment awarded to the salvor for salvaging the ship or other property or for preventing or minimizing the pollution damage to the environment.

Article 186 The following salvage operations shall not be entitled to remuneration:

- (1) The salvage operation is carried out as a duty to normally perform a towage contract or other service contract, with the exception, however, of providing special services beyond the performance of the above said duty.
- (2) The salvage operation is carried out in spite of the express and reasonable prohibition on the part of the Master of the ship in distress, the owner of the ship in question and the owner of the other property.

Article 187 Where the salvage operations have become necessary or more difficult due to the fault of the salvor or where the salvor has committed fraud or other dishonest conduct, the salvor shall be deprived of the whole or part of the payment payable to him.

Article 188 After the completion of the salvage operation, the party salvaged shall, at the request of the salvor, provide satisfactory security for salvage reward and other charges.

Without prejudice to the provisions of the preceding paragraph, the owner of the ship salvaged shall, before the release of the goods, make best endeavours to cause the owners of the property salvaged to provide satisfactory security for the share of the payment that they ought to bear.

Without the consent of the salvor, the ship or other property salvaged shall not be removed from the port or place at which they first arrived after the completion of the salvage operation, until satisfactory security has been provided with respect to the ship or other property salvaged, as demanded by the salvor.

Article 189 The court or the arbitration organization handling the salvor's claim for payment may, in light of the specific circumstances and under fair and just terms, decide or make an award ordering the party salvaged to pay on account an appropriate amount to the salvor.

On the basis of the payment on account made by the party salvaged in accordance with the provisions of the preceding paragraph, the security provided under Article 188 of this Code shall be reduced accordingly.

Article 190 If the party salvaged has neither made the payment nor provided satisfactory security for the ship and other property salvaged after 90 days of the salvage, the salvor may apply to the court for an order on forced sale by auction. With respect to the ship or the property salvaged that cannot be kept or cannot be properly kept, or the storage charge to be incurred may exceed its value, the salvor may apply for an earlier forced sale by auction.

The proceeds of the sale shall, after deduction of the expenses incurred for the storage and sale, be used for the payment in accordance with the provisions of this Code. The remainder, if any, shall be returned to the party salvaged, and, if there is no way to return the remainder or if the remainder has not been claimed after one year of the forced sale, it shall go to the State treasury. In case of any deficiency, the salvor has the right of recourse against the party salvaged.

Article 191 The provisions of this Chapter shall apply to the salvor's right to the payment for the salvage operations carried out between the ships of the same owner.

Article 192 With respect to the salvage operations performed or controlled by the relevant competent authorities of the State, the salvors shall be entitled to avail themselves of the rights and remedies provided for in this Chapter in respect of salvage operations.

## Chapter X General Average



Article 193 General average means the extraordinary sacrifice or expenditure intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the ship, goods or other property involved in a common maritime adventure.

Loss or damage sustained by the ship or goods through delay, whether on the voyage or subsequently, such as demurrage and loss of market as well as other indirect losses, shall not be admitted as general average.

Article 194 When a ship, after having been damaged in consequence of accident, sacrifice or other extraordinary circumstances, shall have entered a port or place of refuge or returned to its port or place of loading to effect repairs which are necessary for the safe prosecution of the voyage, then the port charges paid, the wages and maintenance of the crew incurred and the fuel and stores consumed during the extra period of detention in such port or place, as well as the loss or damage and charges arising from the discharge, storage, reloading and handling of the goods, fuel, stores and other property on board in order to have the repairs done shall be allowed as general average.

Article 195 Any extra expense incurred in place of another expense which would have been allowed as general average shall be deemed to be general average and so allowed, but the amount of such expense incurred shall not be in excess of the general average expense avoided.

Article 196 The onus of proof shall be upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.

Article 197 Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the adventure. However, this shall not prejudice any remedies or defences which may be open against or to that party in respect of such fault.

Article 198 The amounts of sacrifice of the ship, the goods and the freight shall be respectively determined as follows:

(1) The amount of sacrifice of the ship shall be calculated on the basis of the repair cost of the ship actually paid, from which any reasonable deduction in respect of "new for old" being made. Where the ship has not been repaired after the sacrifice, the amount of sacrifice thereof shall be calculated on the basis of the reasonable reduced value of ship after the general average sacrifice. Such amount shall not exceed the estimated cost of repair.

Where the ship is an actual total loss or where the cost of repair would exceed the value of the ship after the repair, the amount of sacrifice of the ship shall be calculated on the basis of the estimated sound value of the ship, less the estimated cost of repair not allowable as general average, as well as the value of the ship after the damage.

(2) The amount of sacrifice of the goods already lost shall be calculated on the basis of the value of the goods at the time of shipment plus insurance and freight, from which the freight that need not be paid due to the sacrifice made being deducted. For the damaged goods that had already been sold before an agreement was reached on the extent of the damage sustained, the amount of

sacrifice thereof shall be calculated on the basis of the difference between the value of the goods at the time of shipment plus insurance and freight, and the net proceeds of the goods so sold.

(3) The amount of sacrifice of the freight shall be calculated on the basis of the amount of loss of freight on account of the sacrifice of the goods, from which the operating expenses that ought to be paid in order to earn such freight but need not be paid because of the sacrifice shall be deducted.

Article 199 The contribution in general average shall be made in proportion to the contributory values of the respective beneficiaries.

The contributory value in general average by the ship, goods and freight shall be determined as follows:

(1) The contributory value of the ship shall be calculated on the basis of the sound value of the ship at the place where the voyage ends, from which any damage that does not come under general average sacrifice being deducted; alternately, the actual value of the ship at the place where the voyage ends, plus the amount of general average sacrifice.

(2) The contributory value of the goods shall be calculated on the basis of the value of the goods at the time of shipment plus insurance and freight, from which the damage that does not come under the general average sacrifice and the carrier's freight at risk being deducted. Where the goods had been sold before its arrival at the port of destination, its value for contribution shall be the net proceeds plus the amount of general average sacrifice.

Passenger's luggage and personal belongings shall not be included in the value for contribution.

(3) The Contributory value of freight shall be calculated on the basis of the amount of freight at the risk of the carrier and which the carrier is entitled to collect at the end of the voyage, less any expense incurred for the prosecution of the voyage after the general average, in order to earn the freight, plus the amount of general average sacrifice.

Article 200 Goods undeclared or wrongfully declared shall be liable for the contribution to general average, but the special sacrifice sustained by such goods shall not be allowed as general average.

Where the value of the goods has been improperly declared at a value below its actual value, the contribution to general average shall be made on the basis of their actual value and, where a general average sacrifice has occurred, the amount of sacrifice shall be calculated on the basis of the declared value.

Article 201 Interest shall be allowed on general average sacrifice and general average expenses paid on account. A commission shall be allowed for the general average expenses paid on account, except those for the wages and maintenance of the crew and fuel and store consumed.

Article 202 The contributing parties shall provide security for general average contribution at the request of the parties that have an interest therein.

Where the security has been provided in the form of cash deposits, such deposits shall be put in a bank by an average adjuster in the name of a trustee.

The provision, use and refund of the deposits shall be without prejudice to the ultimate liability of the contributing parties.

Article 203 The adjustment of general average shall be governed by the average adjustment rules agreed upon in the relevant contract. In the absence of such an agreement in the contract, the relevant provisions contained in this Chapter shall apply.

## Chapter XI Limitation of Liability for Maritime Claims

Article 204 Shipowners and salvors may limit their liability in accordance with the provisions of this Chapter for claims set out in Article 207 of this Code.

The shipowners referred to in the preceding paragraph shall include the charterer and the operator of a ship.

Article 205 If the claims set out in Article 207 of this Code are not made against shipowners or salvors themselves but against persons for whose act, neglect or default the shipowners or salvors are responsible, such persons may limit their liability in accordance with the provisions of this Chapter.

Article 206 Where the assured may limit his liability in accordance with the provisions of this Chapter, the insurer liable for the maritime claims shall be entitled to the limitation of liability under this Chapter to the same extent as the assured.

Article 207 Except as provided otherwise in Articles 208 and 209 of this Code, with respect to the following maritime claims, the person liable may limit his liability in accordance with the provisions of this Chapter, whatever the basis of liability may be:

- (1) Claims in respect of loss of life or personal injury or loss of or damage to property including damage to harbour works, basins and waterways and aids to navigation occurring on board or in direct connection with the operation of the ship or with salvage operations, as well as consequential damages resulting therefrom;
- (2) Claims in respect of loss resulting from delay in delivery in the carriage of goods by sea or from delay in the arrival of passengers or their luggage;
- (3) Claims in respect of other loss resulting from infringement of rights other than contractual rights occurring in direct connection with the operation of the ship or salvage operations;
- (4) Claims of a person other than the person liable in respect of measures taken to avert or minimize loss for which the person liable may limit his liability in accordance with the provisions of this Chapter, and further loss caused by such measures.

All the claims set out in the preceding paragraph, whatever the way they are lodged, may be entitled to limitation of liability. However, with respect to the remuneration set out in sub-

paragraph (4) for which the person liable pays as agreed upon in the contract, in relation to the obligation for payment, the person liable may not invoke the provisions on limitation of liability of this Article.

Article 208 The provisions of this Chapter shall not be applicable to the following claims:

- (1) Claims for salvage payment or contribution in general average;
- (2) Claims for oil pollution damage under the International Convention on Civil Liability for Oil Pollution Damage to which the People's Republic of China is a party;
- (3) Claims for nuclear damage under the International Convention on Limitation of Liability for Nuclear Damage to which the People's Republic of China is a party;
- (4) Claims against the shipowner of a nuclear ship for nuclear damage;
- (5) Claims by the servants of the shipowner or salvor, if under the law governing the contract of employment, the shipowner or salvor is not entitled to limit his liability or if he is by such law only permitted to limit his liability to an amount greater than that provided for in this Chapter.

Article 209 A person liable shall not be entitled to limit his liability in accordance with the provisions of this Chapter, if it is proved that the loss resulted from his act or omission done with the intent to cause such loss or recklessly and with knowledge that such loss would probably result.

Article 210 The limitation of liability for maritime claims, except as otherwise provided for in Article 211 of this Code, shall be calculated as follows:

(1) In respect of claims for loss of life or personal injury:

- a) 333,000 Units of Account for a ship with a gross tonnage ranging from 300 to 500 tons;
- b) For a ship with a gross tonnage in excess of 500 tons, the limitation under a) above shall be applicable to the first 500 tons and the following amounts in addition to that set out under a) shall be applicable to the gross tonnage in excess of 500 tons:

For each ton from 501 to 3,000 tons: 500 Units of Account;

For each ton from 3,001 to 30,000 tons: 333 Units of Account;

For each ton from 30,001 to 70,000 tons: 250 Units of Account;

For each ton in excess of 70,000 tons: 167 Units of Account;

(2) In respect of claims other than that for loss of life or personal injury:

- a) 167,000 Units of Account for a ship with a gross tonnage ranging from 300 to 500 tons;
- b) For a ship with a gross tonnage in excess of 500 tons, the limitation under a) above shall be applicable to the first 500 tons, and the following amounts in addition to that under a) shall be applicable to the part in excess of 500 tons:

For each ton from 501 to 30,000 tons: 167 Units of Account;

For each ton from 30,001 to 70,000 tons: 125 Units of Account;

For each ton in excess of 70,000 tons: 83 Units of Account.

(3) Where the amount calculated in accordance with sub-paragraph (1) above is insufficient for payment of claims for loss of life or personal injury set out therein in full, the amount calculated in accordance with sub-paragraph (2) shall be available for payment of the unpaid balance of claims under sub-paragraph (1), and such unpaid balance shall rank rateably with claims set out under sub-paragraph (2).

(4) However, without prejudice to the right of claims for loss of life or personal injury under sub-paragraph (3), claims in respect of damage to harbour works, basins and waterways and aids to navigation shall have priority over other claims under sub-paragraph (2).

(5) The limitation of liability for any salvor not operating from any ship or for any salvor operating solely on the ship to, or in respect of which, he is rendering salvage services, shall be calculated according to a gross tonnage of 1,500 tons.

The limitation of liability for ships with a gross tonnage not exceeding 300 tons and those engaging in transport services between the ports of the People's Republic of China as well as those for other coastal works shall be worked out by the competent authorities of transport and communications under the State Council and implemented after its being submitted to and approved by the State Council.

Article 211 In respect of claims for loss of life or personal injury to passengers carried by sea, the limitation of liability of the shipowner thereof shall be an amount of 46,666 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's relevant certificate, but the maximum amount of compensation shall not exceed 25,000,000 Units of Account.

The limitation of liability for claims for loss of life or personal injury to passengers carried by sea between the ports of the People's Republic of China shall be worked out by the competent authorities of transport and communications under the State Council and implemented after its being submitted to and approved by the State Council.

Article 212 The limitation of liability under Articles 210 and 211 of this Code shall apply to the aggregate of all claims that may arise on any given occasion against shipowners and salvors themselves, and any person for whose act, neglect or fault the shipowners and the salvors are responsible.

Article 213 Any person liable claiming the limitation of liability under this Code may constitute a limitation fund with a court having jurisdiction. The fund shall be constituted in the sum of such an amount set out respectively in Articles 210 and 211, together with the interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund.

Article 214 Where a limitation fund has been constituted by a person liable, any person having made a claim against the person liable may not exercise any right against any assets of the person liable. Where any ship or other property belonging to the person constituting the fund has been arrested or attached, or, where a security has been provided by such person, the court shall order without delay the release of the ship arrested or the property attached or the return of the security provided.

Article 215 Where a person entitled to limitation of liability under the provisions of this Chapter has a counter-claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Chapter shall only apply to the balance, if any.

## Chapter XII Contract of Marine Insurance

### Section 1 Basic Principles

Article 216 A contract of marine insurance is a contract whereby the insurer undertakes, as agreed, to indemnify the loss to the subject matter insured and the liability of the insured caused by perils covered by the insurance against the payment of an insurance premium by the insured.

The covered perils referred to in the preceding paragraph mean any maritime perils agreed upon between the insurer and the insured, including perils occurring in inland rivers or on land which is related to a maritime adventure.

Article 217 A contract of marine insurance mainly includes:

- (1) Name of the insurer;
- (2) Name of the insured;
- (3) Subject matter insured;
- (4) Insured value;
- (5) Insured amount;
- (6) Perils insured against and perils excepted;
- (7) Duration of insurance coverage;
- (8) Insurance premium.

Article 218 The following items may come under the subject matter of marine insurance:

- (1) Ship;
- (2) Cargo;

- (3) Income from the operation of the ship including freight, charter hire and passenger's fare;
- (4) Expected profit on cargo;
- (5) Crew's wages and other remuneration;
- (6) Liabilities to a third person;
- (7) Other property which may sustain loss from a maritime peril and the liability and expenses arising therefrom.

The insurer may reinsure the insurance of the subject matter enumerated in the preceding paragraph. Unless otherwise agreed in the contract, the original insured shall not be entitled to the benefit of the reinsurance.

Article 219 The insurable value of the subject matter insured shall be agreed upon between the insurer and the insured.

Where no insurable value has been agreed upon between the insurer and the insured, the insurable value shall be calculated as follows:

- (1) The insurable value of the ship shall be the value of the ship at the time when the insurance liability commences, being the total value of the ship's hull, machinery, equipment, fuel, stores, gear, provisions and fresh water on board as well as the insurance premium;
- (2) The insurable value of the cargo shall be the aggregate of the invoice value of the cargo or the actual value of the non-trade commodity at the place of shipment, plus freight and insurance premium when the insurance liability commences;
- (3) The insurable value of the freight shall be the aggregate of the total amount of freight payable to the carrier and the insurance premium when the insurance liability commences;
- (4) The insurable value of other subject matter insured shall be the aggregate of the actual value of the subject matter insured and the insurance premium when the insurance liability commences.

Article 220 The insured amount shall be agreed upon between the insurer and the insured. The insured amount shall not exceed the insured value. Where the insured amount exceeds the insured value, the portion in excess shall be null and void.

## Section 2 Conclusion, Termination and Assignment of Contract

Article 221 A contract of marine insurance comes into being after the insured puts forth a proposal for insurance and the insurer agrees to accept the proposal and the insurer and the insured agree on the terms and conditions of the insurance. The insurer shall issue to the insured an insurance policy or other certificate of insurance in time, and the contents of the contract shall be contained therein.

Article 222 Before the contract is concluded, the insured shall truthfully inform the insurer of the material circumstances which the insured has knowledge of or ought to have knowledge of in his

ordinary business practice and which may have a bearing on the insurer in deciding the premium or whether he agrees to insure or not.

The insured need not inform the insurer of the facts which the insurer has known of or the insurer ought to have knowledge of in his ordinary business practice if about which the insurer made no inquiry.

Article 223 Upon failure of the insured to truthfully inform the insurer of the material circumstances set forth in paragraph 1 of Article 222 of this Code due to his intentional act, the insurer has the right to terminate the contract without refunding the premium. The insurer shall not be liable for any loss arising from the perils insured against before the contract is terminated.

If, not due to the insured's intentional act, the insured did not truthfully inform the insurer of the material circumstances set out in paragraph 1 of Article 222 of this Code, the insurer has the right to terminate the contract or to demand a corresponding increase in the premium. In case the contract is terminated by the insurer, the insurer shall be liable for the loss arising from the perils insured against which occurred prior to the termination of the contract, except where the material circumstances uninformed or wrongly informed of have an impact on the occurrence of such perils.

Article 224 Where the insured was aware or ought to be aware that the subject matter insured had suffered a loss due to the incidence of a peril insured against when the contract was concluded, the insurer shall not be liable for indemnification but shall have the right to the premium. Where the insurer was aware or ought to be aware that the occurrence of a loss to the subject matter insured due to a peril insured against was impossible, the insured shall have the right to recover the premium paid.

Article 225 Where the insured concludes contracts with several insurers for the same subject matter insured and against the same risk, and the insured amount of the said subject matter insured thereby exceeds the insured value, then, unless otherwise agreed in the contract, the insured may demand indemnification from any of the insurers and the aggregate amount to be indemnified shall not exceed the loss value of the subject matter insured. The liability of each insurer shall be in proportion to that which the amount he insured bears to the total of the amounts insured by all insurers. Any insurer who has paid an indemnification in an amount greater than that for which he is liable, shall have the right of recourse against those who have not paid their indemnification in the amounts for which they are liable.

Article 226 Prior to the commencement of the insurance liability, the insured may demand the termination of the insurance contract but shall pay the handling fees to the insurer, and the insurer shall refund the premium.

Article 227 Unless otherwise agreed in the contract, neither the insurer nor the insured may terminate the contract after the commencement of the insurance liability.

Where the insurance contract provides that the contract may be terminated after the commencement of the liability, and the insured demands the termination of the contract, the insurer shall have the right to the premium payable from the day of the commencement of the insurance liability to the day of termination of the contract and refund the remaining portion. If it



is the insurer who demands the termination of the contract, the unexpired premium from the day of the termination of the contract to the day of the expiration of the period of insurance shall be refunded to the insured.

Article 228 Notwithstanding the stipulations in Article 227 of this Code, the insured may not demand termination of the contract for cargo insurance and voyage insurance on ship after the commencement of the insurance liability.

Article 229 A contract of marine insurance for the carriage of goods by sea may be assigned by the insured by endorsement or otherwise, and the rights and obligations under the contract are assigned accordingly. The insured and the assignee shall be jointly and severally liable for the payment of the premium if such premium remains unpaid up to the time of the assignment of the contract.

Article 230 The consent of the insurer shall be obtained where the insurance contract is assigned in consequence of the transfer of the ownership of the ship insured. In the absence of such consent, the contract shall be terminated from the time of the transfer of the ownership of the ship. Where the transfer takes place during the voyage, the contract shall be terminated when the voyage ends.

Upon termination of the contract, the insurer shall refund the unexpired premium to the insured calculated from the day of the termination of the contract to the day of its expiration.

Article 231 The insured may conclude an open cover with the insurer for the goods to be shipped or received in batches within a given period. The open cover shall be evidenced by an open policy to be issued by the insurer.

Article 232 The insurer shall, at the request of the insured, issue insurance certificates separately for the cargo shipped in batches according to the open cover.

Where the contents of the insurance certificates issued by the insurer separately differ from those of the open policy, the insurance certificates issued separately shall prevail.

Article 233 The insured shall notify the insurer immediately on learning that the cargo insured under the open cover has been shipped or has arrived. The items to be notified of shall include the name of the carrying ship, the voyage, the value of the cargo and the insured amount.

### Section 3 Obligation of the Insured

Article 234 Unless otherwise agreed in the insurance contract, the insured shall pay the premium immediately upon conclusion of the contract. The insurer may refuse to issue the insurance policy or other insurance certificate before the premium is paid by the insured.

Article 235 The insured shall notify the insurer in writing immediately where the insured has not complied with the warranties under the contract. The insurer may, upon receipt of the notice, terminate the contract or demand an amendment to the terms and conditions of the insurance coverage or an increase in the premium.

Article 236 Upon the occurrence of the peril insured against, the insured shall notify the insurer immediately and shall take necessary and reasonable measures to avoid or minimize the loss.

Where special instructions for the adoption of reasonable measures to avoid or minimize the loss are received from the insurer, the insured shall act according to such instructions.

The insurer shall not be liable for the extended loss caused by the insured's breach of the provisions of the preceding paragraph.

#### Section 4 Liability of the Insurer

Article 237 The insurer shall indemnify the insured promptly after the loss from a peril insured against has occurred.

Article 238 The insurer's indemnification for the loss from the peril insured against shall be limited to the insured amount. Where the insured amount is lower than the insured value, the insurer shall indemnify in the proportion that the insured amount bears to the insured value.

Article 239 The insurer shall be liable for the loss to the subject matter insured arising from several perils insured against during the period of the insurance even though the aggregate of the amounts of loss exceeds the insured amount. However, the insurer shall only be liable for the total loss where the total loss occurs after the partial loss which has not been repaired.

Article 240 The insurer shall pay, in addition to the indemnification to be paid with regard to the subject matter insured, the necessary and reasonable expenses incurred by the insured for avoiding or minimizing the loss recoverable under the contract, the reasonable expenses for survey and assessment of the value for the purpose of ascertaining the nature and extent of the peril insured against and the expenses incurred for acting on the special instructions of the insurer.

The payment by the insurer of the expenses referred to in the preceding paragraph shall be limited to that equivalent to the insured amount.

Where the insured amount is lower than the insured value, the insurer shall be liable for the expenses referred to in this Article in the proportion that the insured amount bears to the insured value, unless the contract provides otherwise.

Article 241 Where the insured amount is lower than the value for contribution under the general average, the insurer shall be liable for the general average contribution in the proportion that the insured amount bears to the value for contribution.

Article 242 The insurer shall not be liable for the loss caused by the intentional act of the insured.

Article 243 Unless otherwise agreed in the insurance contract, the insurer shall not be liable for the loss of or damage to the insured cargo arising from any of the following causes:

- (1) Delay in the voyage or in the delivery of cargo or change of market price;
- (2) Fair wear and tear, inherent vice or nature of the cargo; and
- (3) Improper packing.

Article 244 Unless otherwise agreed in the insurance contract, the insurer shall not be liable for the loss of or damage to the insured ship arising from any of the following causes:

(1) Unseaworthiness of the ship at the time of the commencement of the voyage, unless where under a time policy the insured has no knowledge thereof;

(2) Wear and tear or corrosion of the ship.

The provisions of this Article shall apply " mutatis mutandis" to the insurance of freight.

#### Section 5 Loss of or Damage to the Subject Matter Insured and Abandonment

Article 245 Where after the occurrence of a peril insured against the subject matter insured is lost or is so seriously damaged that it is completely deprived of its original structure and usage or the insured is deprived of the possession thereof, it shall constitute an actual total loss.

Article 246 Where a ship's total loss is considered to be unavoidable after the occurrence of a peril insured against or the expenses necessary for avoiding the occurrence of an actual total loss would exceed the insured value, it shall constitute a constructive total loss.

Where an actual total loss is considered to be unavoidable after the cargo has suffered a peril insured against, or the expenses to be incurred for avoiding the total actual loss plus that for forwarding the cargo to its destination would exceed its insured value, it shall constitute a constructive total loss.

Article 247 Any loss other than an actual total loss or a constructive total loss is a partial loss.

Article 248 Where a ship fails to arrive at its destination within a reasonable time from the place where it was last heard of, unless the contract provides otherwise, if it remains unheard of upon the expiry of two months, it shall constitute missing. Such missing shall be deemed to be an actual total loss.

Article 249 Where the subject matter insured has become a constructive total loss and the insured demands indemnification from the insurer on the basis of a total loss, the subject matter insured shall be abandoned to the insurer. The insurer may accept the abandonment or choose not to, but shall inform the insured of his decision whether to accept the abandonment within a reasonable time.

The abandonment shall not be attached with any conditions. Once the abandonment is accepted by the insurer, it shall not be withdrawn.

Article 250 Where the insurer has accepted the abandonment, all rights and obligations relating to the property abandoned are transferred to the insurer.

#### Section 6 Payment of Indemnity

Article 251 After the occurrence of a peril insured against and before the payment of indemnity, the insurer may demand that the insured submit evidence and materials related to the ascertainment of the nature of the peril and the extent of the loss.

Article 252 Where the loss of or damage to the subject matter insured within the insurance coverage is caused by a third person, the right of the insured to demand compensation from the third person shall be subrogated to the insurer from the time the indemnity is paid.

The insured shall furnish the insurer with necessary documents and information that should come to his knowledge and shall endeavour to assist the insurer in pursuing recovery from the third person.

Article 253 Where the insured waives his right of claim against the third person without the consent of the insurer or the insurer is unable to exercise the right of recourse due to the fault of the insured, the insurer may make a corresponding reduction from the amount of indemnity.

Article 254 In effecting payment of indemnity to the insured, the insurer may make a corresponding reduction therefrom of the amount already paid by a third person to the insured.

Where the compensation obtained by the insurer from the third person exceeds the amount of indemnity paid by the insurer, the part in excess shall be returned to the insured.

Article 255 After the occurrence of a peril insured against, the insurer is entitled to waive his right to the subject matter insured and pay the insured the amount in full to relieve himself of the obligations under the contract.

In exercising the right prescribed in the preceding paragraph, the insurer shall notify the insured thereof within seven days from the day of the receipt of the notice from the insured regarding the indemnity. The insurer shall remain liable for the necessary and reasonable expenses paid by the insured for avoiding or minimizing the loss prior to his receipt of the said notice.

Article 256 Except as stipulated in Article 255 of this Code, where a total loss occurs to the subject matter insured and the full insured amount is paid, the insurer shall acquire the full right to the subject matter insured. In the case of under-insurance, the insurer shall acquire the right to the subject matter insured in the proportion that the insured amount bears to the insured value.

### Chapter XIII Limitation of Time

Article 257 The limitation period for claims against the carrier with regard to the carriage of goods by sea is one year, counting from the day on which the goods were delivered or should have been delivered by the carrier. Within the limitation period or after the expiration thereof, if the person allegedly liable has brought up a claim of recourse against a third person, that claim is time-barred at the expiration of 90 days, counting from the day on which the person claiming for the recourse settled the claim, or was served with a copy of the process by the court handling the claim against him.

The limitation period for claims against the carrier with regard to voyage charter party is two years, counting from the day on which the claimant knew or should have known that his right had been infringed.

Article 258 The limitation period for claims against the carrier with regard to the carriage of passengers by sea is two years, counting respectively as follows:

(1) Claims for personal injury: Counting from the day on which the passenger disembarked or should have disembarked;

(2) Claims for death of passengers that occurred during the period of carriage: Counting from the day on which the passenger should have disembarked; whereas those for the death of passengers that occurred after the disembarkation but resulted from an injury during the period of carriage by sea, counting from the day of the death of the passenger concerned, provided that this period does not exceed three years from the time of disembarkation.

(3) Claims for loss of or damage to the luggage: Counting from the day of disembarkation or the day on which the passenger should have disembarked.

Article 259 The limitation period for claims with regard to charter parties is two years, counting from the day on which the claimant knew or should have known that his right had been infringed.

Article 260 The limitation period for claims with regard to sea towage is one year, counting from the day on which the claimant knew or should have known that his right had been infringed.

Article 261 The limitation period for claims with regard to collision of ships is two years, counting from the day on which the collision occurred. The limitation period for claims with regard to the right of recourse as provided for in paragraph 3 of Article 169 of this Code is one year, counting from the day on which the parties concerned jointly and severally paid the amount of compensation for the damage occurred.

Article 262 The limitation period for claims with regard to salvage at sea is two years, counting from the day on which the salvage operation was completed.

Article 263 The limitation period for claims with regard to contribution in general average is one year, counting from the day on which the adjustment was finished.

Article 264 The limitation period for claims with regard to contracts of marine insurance is two years, counting from the day on which the peril insured against occurred.

Article 265 The limitation period for claims with regard to compensation for oil pollution damage from ships is three years, counting from the day on which the pollution damage occurred. However, in no case shall the limitation period exceed six years, counting from the day on which the accident causing the pollution occurred.

Article 266 Within the last six months of the limitation period if, on account of force majeure or other causes preventing the claims from being made, the limitation period shall be suspended. The counting of the limitation period shall be resumed when the cause of suspension no longer exists.

Article 267 The limitation of time shall be discontinued as a result of bringing an action or submitting the case for arbitration by the claimant or the admission to fulfill obligations by the person against whom the claim was brought up. However, the limitation of time shall not be

discontinued if the claimant withdraws his action or his submission for arbitration, or his action has been rejected by a decision of the court.

Where the claimant makes a claim for the arrest of a ship, the limitation of time shall be discontinued from the day on which the claim is made.

The limitation period shall be counted anew from the time of discontinuance.

#### Chapter XIV Application of Law in Relation to Foreign-related Matters

Article 268 If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those contained in this Code, the provisions of the relevant international treaty shall apply, unless the provisions are those on which the People's Republic of China has announced reservations.

International practice may be applied to matters for which neither the relevant laws of the People's Republic of China nor any international treaty concluded or acceded to by the People's Republic of China contain any relevant provisions

Article 269 The parties to a contract may choose the law applicable to such contract, unless the law provides otherwise. Where the parties to a contract have not made a choice, the law of the country having the closest connection with the contract shall apply.

Article 270 The law of the flag State of the ship shall apply to the acquisition, transfer and extinction of the ownership of the ship.

Article 271 The law of the flag State of the ship shall apply to the mortgage of the ship.

The law of the original country of registry of a ship shall apply to the mortgage of the ship if its mortgage is established before or during its bareboat charter period.

Article 272 The law of the place where the court hearing the case is located shall apply to matters pertaining to maritime liens.

Article 273 The law of the place where the infringing act is committed shall apply to claims for damages arising from collision of ships.

The law of the place where the court hearing the case is located shall apply to claims for damages arising from collision of ships on the high sea .

If the colliding ships belong to the same country, no matter where the collision occurs, the law of the flag State shall apply to claims against one another for damages arising from such collision.

Article 274 The law where the adjustment of general average is made shall apply to the adjustment of general average.

Article 275 The law of the place where the court hearing the case is located shall apply to the limitation of liability for maritime claims.

Article 276 The application of foreign laws or international practices pursuant to the provisions of this Chapter shall not jeopardize the public interests of the People's Republic of China.

#### Chapter XV Supplementary Provisions

Article 277 The Unit of Account referred to in this Code is the Special Drawing Right as defined by the International Monetary Fund; the amount of the Chinese currency (RMB) in terms of the Special Drawing Right shall be that computed on the basis of the method of conversion established by the authorities in charge of foreign exchange control of this country on the date of the judgment by the court or the date of the award by the arbitration organization or the date mutually agreed upon by the parties.

Article 278 This Code shall come into force as of July 1, 1993.

# **Law of the People's Republic of China on Bid Invitation and Bidding**

Adopted at the 11th Meeting of the Standing Committee of the Ninth National People's Congress on August 30, 1999 and promulgated by Order No. 21 of the President of the People's Republic of China on August 30, 1999

## Contents

### Chapter I General Provisions

### Chapter II Bid Invitation

### Chapter III Bidding

### Chapter IV Opening, Evaluation and Winning of Bids

### Chapter V Legal Liability

### Chapter VI Supplementary Provisions

### Chapter I General Provisions

Article 1 This Law is enacted in order to regulate bid invitation and bidding activities, protect the interests of the State and the public as well as the lawful rights and interests of the parties involved in bid invitation and bidding activities, increase economic benefits and ensure project quality.

Article 2 This Law is applicable to any bid invitation and bidding activities conducted within the territory of the People's Republic of China.

Article 3 The following construction projects to be undertaken within the territory of the People's Republic of China, including the surveying, design, construction and supervision of such projects as well as the purchase of key equipment and materials for such projects, shall be subject to bid invitation:

- (1) large infrastructure and public utility projects that concern public interests and security;
- (2) projects invested completely or partly with State-owned funds or financed by the State; and
- (3) projects using loans or aid funds from international organizations or governments of other countries.

The specific scope and threshold for bidding of the projects listed in the preceding paragraph shall be formulated by the development planning department under the State Council, together with the relevant departments under the State Council, and be submitted to the State Council for approval.



Where there are provisions in other laws or in the regulations of the State Council governing scope of other projects for which bid invitation is required, such provisions shall be followed.

Article 4 No units or individuals may break up into parts a project for which bid invitation is required by law or try to dodge bid invitation by any other means.

Article 5 Bid invitation and bidding activities shall be conducted in adherence to the principles of openness, fairness, impartiality and good faith.

Article 6 Bid invitation and bidding for projects for which bid invitation is required by law shall be subject to limitations imposed by the local authorities or departments. No units or individuals may, in violation of law, impose limitations on legal persons or other organizations from other regions or departments or exclude them from participating in bidding or illegally interfere, by any means, in bid invitation and bidding activities.

Article 7 All bid invitation and bidding activities and the parties involved shall be subject to supervision in accordance with law.

Relevant departments for administrative supervision shall, in accordance with law, exercise supervision over bid invitation and bidding activities, and investigate and deal with any violations of law in such activities.

The division of specific duties and powers among the departments for administrative supervision over bid invitation and bidding activities and the relevant departments shall be determined by the State Council.

## Chapter II Bid invitation

Article 8 A bid inviter is a legal person or other organization that, in accordance with the provisions of this Law, presents a project for bidding and calls for bids.

Article 9 Where a project for bidding is required by relevant State regulations to undergo examination for approval, it shall do so before obtaining approval.

A bid inviter shall have the funds needed for the project for bidding or confirmed sources of funds and the fact shall be truthfully stated in its bid invitation documents.

Article 10 Bid invitation is classified into two categories: public invitation and invited bidding.

Public invitation means that the bid inviter, in the form of announcement for bidding, invites unspecified legal persons or other organizations to bid.

Invited bidding means that the bid inviter, in the form of written invitation, to invite specified legal persons or other organizations to bid.

Article 11 Where a national key project determined by the development planning department under the State Council or a local key project determined by the people's government of a province, an autonomous region or a municipality directly under the Central Government is not suited for public invitation, it may be subject to invited bidding with the approval of the said department and the said people's government respectively.

Article 12 A bid inviter shall have the right to choose, on its own, a bid invitation agency and entrust it with the handling of the matters of bid invitation. No units or individuals may, by any means, designate a bid invitation agency for the bid inviter.

A bid inviter who has the capability of preparing documents for bid invitation and arranging for bid evaluation may handle the matters of bid invitation on its own. No units or individuals may compel the bid inviter to entrust a bid invitation agency with the handling of such matters.

Where a bid inviter handles, on its own, the matter of bid invitation for a project for which bid invitation is required by law, he shall register with the relevant department for administrative supervision.

Article 13 A bid invitation agency is an intermediary organization set up in accordance with law to engage in bid invitation as an agent and provide service in this field.

A bid invitation agency shall satisfy the following conditions:

- (1) having a place and the necessary funds for serving as a bid invitation agency;
- (2) having the necessary professionals to prepare documents for bid invitation and arrange for bid evaluation; and
- (3) having a pool of experts in technology, economics, etc. who meet the qualifications prescribed in Paragraph 3 of Article 37 of this Law and who can be candidates for members of a bid evaluation committee.

Article 14 The qualifications of a bid invitation agency for engineering projects shall be subject to verification by the administrative department for construction under the State Council or the people's government of a province, an autonomous region or a municipality directly under the Central Government. The specific measures therefor shall be formulated by the administrative department for construction under the State Council together with the relevant departments under the State Council. The competent departments for verifying the qualifications of bid invitation agencies in other fields of endeavor shall be determined by the State Council.

There shall be no subordination or other relationship of interest between a bid invitation agency and an administrative organ or any other State organ.

Article 15 A bid invitation agency shall handle the matters of bid invitation within the scope entrusted to it by the bid inviter and shall abide by the provisions of this Law regarding the bid inviters.

Article 16 Where a bid inviter adopts public invitation, it shall make an announcement for bidding. An announcement for bidding made for which bid invitation is required by law shall be published in newspapers, information networks or other medium as are designated by the State.

In the announcement for bidding shall be clearly stated such particulars as the name and address of the bid inviter, the nature, number, site and time of the projects involved and the means of obtaining the bid invitation documents.

Article 17 Where a bid inviter adopts invited bidding, it shall send written invitation to at least three specified legal persons or other organizations that are capable of undertaking the project for bidding and have a good reputation and qualification.

In the written invitation for bidding shall be clearly stated the particulars specified in Paragraph 2 of Article 16 of this Law.

Article 18 Based on the requirements of the project for bidding, a bid inviter may, in its announcement or written invitation for bidding, request potential bidders to provide certificates and information concerning their competence and business achievements and examine the qualifications of the potential bidders. Where there are State regulations governing qualifications of the bidders, such regulations shall be followed.

No bid inviter may, with unreasonable requirements, impose limitations on any potential bidder or exclude them from bidding or discriminate against them.

Article 19 A bid inviter shall, on the basis of the characteristics and requirements of a project, prepare bid invitation documents. Such documents shall include technical specifications of the project for bidding, criteria for examination of the bidders' qualifications, requirements for bid quotation, bid evaluation criteria, and other substantive requirements and terms, as well as the principal clauses of a contract to be signed.

Where there are State regulations governing the technology and standards for the project subject to bidding, a bid inviter shall, in accordance with such regulations, state its requirements in the bid invitation documents.

Where it is necessary to divide a project for bidding into bid lots or to fix a time limit for completion of the project, the bid inviter shall do it reasonably and shall state it clearly in the bid invitation documents.

Article 20 In a bid invitation document no specified producer or supplier may be demanded or indicated, nor any other particulars favoring or excluding potential bidders may be contained.

Article 21 A bid inviter may, in light of the specific conditions of a project subject to bidding, make arrangements for potential bidders to inspect the site of the project.

Article 22 No bid inviter may disclose to others the names and number of the potential bidders who have obtained the bid invitation documents or other information relating to bid invitation and bidding activities which may affect fair competition.

Where a bid inviter has fixed a base price for bid, it shall keep such price confidential.

Article 23 Where necessary clarifications or modifications are to be made in the bid invitation documents already issued, the bid inviter shall notify in writing all the recipients of the documents at least 15 days prior to the deadline for submission of bid documents set in the bid invitation documents. Such clarifications or modifications shall be a component of the bid invitation documents.

Article 24 A bid inviter shall set a reasonable period of time for bidders to prepare their bid documents; but for a project for which bid invitation is required by law, the minimum period from the date of issuing the bid invitation documents to the deadline for submission of bid documents by bidders shall be not less than 20 days.

### Chapter III Bidding

Article 25 A bidder is a legal person or other organization, that, in response to a bid invitation, participates in the competition.

Where individuals are allowed to participate in the bidding for a scientific research project subject to bidding in accordance with law, the provisions of this Law on bidders shall be applicable to them.

Article 26 A bidder shall have the capability of undertaking the projects that are subject to bidding invitation. Where in relevant State regulations or bid invitation documents there are provisions governing qualifications of bidders, a bidder shall meet such qualifications.

Article 27 A bidder shall prepare its bid documents in compliance with the requirements set in the bid invitation documents. The bid documents shall be prepared in response to the substantive requirements and terms specified in the bid invitation documents.

Where a project subject to bid invitation is a construction project, the bid documents shall include such information as the resume and professional achievements of the project director and chief technicians to be assigned and the mechanical equipment to be employed for completion of the project in question.

Article 28 A bidder shall deliver its bid documents to the place of submission prior to the deadline for submission set in the bid invitation documents. Upon receiving the bid documents, the bid inviter shall sign for and safe-keep them but may not open them. Where there are less than three bidders, the bid inviter shall, in accordance with this Law, invite bids anew.

The bid inviter shall refuse to accept any bid documents delivered after the deadline for submission set in the bid invitation documents.

Article 29 Prior to the deadline for submission of bid documents set in the bid invitation documents, a bidder may supplement, modify or withdraw its bid documents already delivered and shall notify the bid inviter of the same in writing. Such supplements or modifications shall be a component of the bid documents.

Article 30 Where a bidder, after winning the bid and on the basis of the actual conditions clearly stated in the bid invitation documents, intends to subcontract some minor or less crucial parts of the project, shall make it clear in the bid documents.

Article 31 Two or more legal persons or other organizations may form a consortium and jointly bid in the capacity of one bidder.

Each party to the consortium shall have the necessary capability of undertaking the project subject to bidding. Where in relevant State regulations or bid invitation documents there are provisions governing qualifications of bidders, all parties to the consortium shall meet such qualifications. Where units of the same profession form a consortium, the qualification grade of the consortium shall be determined on the basis of the unit at a lower qualification level.

All parties to a consortium shall sign an agreement on joint bidding, in which the tasks and responsibilities of each party are clearly defined, and shall submit to the bid inviter the said agreement together with the bid documents. Where such a consortium wins the bid, all parties of the consortium shall jointly sign a contract with the bid inviter and bear joint and several liability to the bid inviter for the bid the consortium wins.

No bid inviter may compel bidders to form a consortium for joint bidding or limit competition among bidders.

Article 32 No bidder may collude with each other in the matter of their quotations or exclude others from fair competition so as to impair the lawful rights and interests of the bid inviter or the other bidders.

No bidder may collude with the bid inviter in bidding so as to impair the interests of the State and the general public or the lawful rights and interests of others.

Bidders are prohibited from bribing the bid inviter or members of the bid evaluation committee for the purpose of winning the bid.

Article 33 No bidder may compete for a bid at a price below cost, or to win the bid in the name of another person or by other fraudulent means.

#### Chapter IV Opening, Evaluation and Winning of Bids

Article 34 Opening of bids shall be done in public at the same time as the deadline for submission of bid documents set in the bid invitation documents; and the place for opening the bids shall be the one predetermined in the said bid invitation documents.

Article 35 Opening of bids shall be presided over by the bid inviter, and all bidders shall be invited to participate.

Article 36 Before bids are opened, the bidders or their elected representatives shall check the sealing of their bid documents, and the sealing may also be checked and notarized by the notary agency commissioned by the bid inviter. After checking and verifying that nothing is wrong, a staff member shall open the bids in public and read out the names of the bidders, bid prices and other main contents in the bid documents.

All the bid documents received by the bid inviter prior to the deadline for submission as required in the bid invitation documents shall be opened and read out in public at the time when the bids are opened.

The bid opening process shall be recorded, which shall be filed for future examination.

Article 37 The bid evaluation committee established by the bid inviter in accordance with law shall be responsible for evaluation of the bids.

The bid evaluation committee for a project for which bid invitation is required by law shall be composed of the representatives of the bid inviter and experts in the relevant technological, economic and other fields. The number of the committee members shall be an odd number not less than five, among whom, the number of experts in technical, economic and other fields shall be not less than two-third of the total.

The experts mentioned in the preceding paragraph shall have at least eight years' experience in relevant fields with senior professional titles or at an equivalent professional level, and they shall be chosen by the bid inviter from the name lists of experts provided by relevant departments under the State Council or under the people's governments of provinces, autonomous regions or municipalities directly under the Central Government, or from the name lists of experts in the relevant fields contained in the pools of experts provided by bid invitation agencies. For an ordinary project subject to bid invitation, a random choice may be made, but for a special project, the experts may be chosen directly by the bid inviter.

No one who has a relationship of interest with a bidder may become a member of the bid evaluation committee for the related project. Where such a person is already a member, he shall be replaced.

The name list of the members of the bid evaluation committee shall be kept confidential before the bidders who win the bid are determined.

Article 38 A bid inviter shall take necessary measures to ensure that bid evaluation is conducted in a strictly confidential manner.

No units or individuals may illegally interfere in or exert influence on the bid evaluation process or results.

Article 39 The bid evaluation committee may ask a bid inviter to make necessary clarification or explanation of the parts of the bid invitation documents that are not clear in meaning; however, such clarification or explanation may not exceed the scope of the documents or alter any substantive contents of the documents.

Article 40 The bid evaluation committee shall, in accordance with the evaluation criteria and methods specified in the bid invitation documents, evaluate and compare all the bid documents, and it shall refer to the base price where there is one available. After the bid evaluation committee has completed evaluation, it shall present a written report to the bid inviter and recommend the candidates that are qualified for winning the bid.

The bid inviter shall, based on the written report on bid evaluation presented by the bid evaluation committee, decide on the bid winner from among the candidates recommended by the said committee. It may also authorize the bid evaluation committee to decide on the bid winner directly.

Where there are specific regulations formulated by the State Council on bid evaluation of special projects subject to bid invitation, those regulations shall be followed.

Article 41 The bid offered by a winner shall satisfy one of the following requirements:

(1) it meets, to the maximum extent, all the comprehensive evaluation criteria specified in the bid invitation documents;

(2) it meets the substantive requirements specified in the bid invitation documents and offers the lowest of the bid prices evaluated; with the exception of the bid price that is below cost.

Article 42 If after evaluation the bid evaluation committee believes that none of the bids satisfies the requirements specified in the bid invitation documents, it may reject all of them.

Where all the bids for a project for which bid invitation is required by law are rejected, the bid inviter shall invite bids anew in accordance with this Law.

Article 43 Before the bid winner is decided on, no bid inviter may negotiate with the bidders on such substantive matters as the bid prices and bidding plans, etc.

Article 44 Members of the bid evaluation committee shall objectively and impartially perform their duties, comply with the code of professional ethics and be responsible for their own evaluation opinions.

No member of the bid evaluation committee may make any private contact with the bidders, or receive or accept any money, things of value or other favors from the bidders.

No member of the bid evaluation committee or staff member involved in bid evaluation may disclose any information concerning the evaluation and comparison of the bid documents, the recommended candidates for winning the bid or any other information relating to bid evaluation.

Article 45 As soon as the bid winner is decided on, the bid inviter shall notify the winner of the fact in writing and, at the same time, inform all the unsuccessful bidders of the result.

The notification is legally binding on both the bid inviter and the bid winner. Where after the notification is sent out, the bid inviter changes the bidding result or the bid winner gives up the bid won, it shall bear legal liability in accordance with law.

Article 46 The bid inviter and the bid winner shall, within 30 days beginning from the date the notification is sent out, sign a written contract on the basis of bid invitation documents and the bid documents of the winner. They may not conclude any other agreement contrary to the substantive matters of the contract.

Where in the bid invitation documents the bid winner is required to provide performance security, it shall do so.

Article 47 For a project for which bid invitation is required by law, the bid inviter shall, within 15 days beginning from the date the bid winner is decided on, submit a written report about the bid invitation and bidding to the relevant department for administrative supervision.

Article 48 A bid winner shall, in accordance with the provisions of the contract, fulfil its obligations and finish the project. It may not transfer the bid won to others or break it up into parts and transfer them to others.

A bid winner may, in accordance with the provisions of the contract or with the agreement of the bid inviter, subcontract some minor or less crucial parts of the project to others. The subcontractors shall meet the necessary qualifications and may not further subcontract the work.

A bid winner shall be responsible to the bid inviter for the subcontracted parts, and the subcontractors shall bear joint and several liability for the subcontracted work.

## Chapter V Legal Liability

Article 49 Any unit that, in violation of the provisions of this Law, fails to invite bids for a project subject to bid invitation, or breaks up the project into parts, or by any other means tries to dodge bid invitation shall put it right within a time limit and may be fined not less than 0.5 percent but not more than 1 percent of the contract value of the project; where a project, which completely or partly uses state-owned funds is concerned, its construction or allocation of funds may be suspended. The persons who are directly in charge and the other persons who are directly responsible shall be given sanctions in accordance with law.

Article 50 Where a bid invitation agency, in violation of the provisions of this Law, divulges confidential information and materials relating to the bid invitation and bidding activities or colludes with the bid inviter and bidders to damage the interests of the State and the general public or the lawful rights and interests of others, it shall be fined not less than 50,000 yuan but not more than 250,000 yuan. The persons who are directly in charge and the other persons who are directly responsible shall be fined not less than 5 per cent but not more than 10 per cent of the fine imposed on the agency; the illegal gains, if any, shall be confiscated. If the circumstances are serious, the qualifications of the agency shall be suspended or revoked. If a crime is constituted, criminal responsibility shall be pursued in accordance with law. If any losses are caused to others, liability for compensation shall be imposed in accordance with law.



Where the bid result is affected by any of the acts mentioned in the preceding paragraph, it shall be nullified.

Article 51 Any bid inviter who, with unreasonable requirements, imposes limitations on or excludes potential bidders from bidding or discriminates against them, compels bidders to form a consortium to bid jointly, or restrains competition among the bidders shall be ordered to make rectification and may be fined not less than 10,000 yuan but not more than 50,000 yuan.

Article 52 Any bid inviter for a project for which bid invitation is required by law who discloses the names and number of potential bidders who have already obtained the bid invitation documents or any other relevant information regarding bid invitation and bidding which may affect fair competition or divulges the bid base price shall be given a disciplinary warning and may also be fined not less than 10,000 yuan but not more than 100,000 yuan. The persons who are directly in charge and the other persons who are directly responsible shall be given sanctions in accordance with law. If a crime is constituted, criminal responsibility shall be pursued in accordance with law.

Where the bidding result is affected by any of the acts mentioned in the preceding paragraph, it shall be nullified.

Article 53 Where a bidder wins a bid through colluding with other bidders or with the bid inviter in matters of bidding, or through bribing the bid inviter or members of the bid evaluation committee, the bid won shall be nullified and the bidder shall be fined not less than 0.5 percent but not more than 1 percent of the value of the bid won. The persons who are directly in charge and the other persons who are directly responsible shall be fined not less than 5 percent but not more than 10 per cent of the fine imposed on the bidder. The illegal gains, if any, shall be confiscated. If the circumstances are serious, the bidder shall be disqualified for one to two years from taking part in bidding for projects for which bid invitation is required by law and the matter shall be made known to the general public, or its business license shall be revoked by the administrative department of industry and commerce. If a crime is constituted, criminal responsibility shall be pursued in accordance with law. If any losses are caused to others, liability for compensation shall be imposed in accordance with law.

Article 54 Where a bidder wins a bid by submitting the bid in the name of another person or by other fraudulent means, the bid won shall be nullified. If losses are caused to the bid inviter, it shall bear liability for compensation in accordance with law. If a crime is constituted, criminal responsibility shall be pursued in accordance with law.

Where a bidder for a project for which bid invitation is required by law commits any of the acts mentioned in the preceding paragraph, which does not constitute a crime, it shall be fined not less than 0.5 percent but not more than 1 percent of the value of the bid it wins. The persons who are directly in charge and the other persons who are directly responsible shall be fined not less than 5 percent but not more than 10 percent of the fine imposed on the bidder. The illegal gains, if any, shall be confiscated. If the circumstances are serious, the bidder shall be disqualified for one to three years from taking part in bidding for projects for which bid invitation is required by law and

the matter shall be made known to the general public or its business license shall be revoked by the administrative department of industry and commerce .

Article 55 Where a bid inviter for a project for which bid invitation is required by law, in violation of the provisions of this Law , negotiates with bidders on such substantive matters as the bid prices and bidding plans, it shall be given a disciplinary warning and the persons who are directly in charge and the other persons who are directly responsible shall be given sanctions in accordance with law.

If any of the acts mentioned in the preceding paragraph affects the bidding result, the bid won shall be nullified.

Article 56 Where a member of the bid evaluation committee receives or accepts money, things of value or other favors from a bidder or where a member of the bid evaluation committee or a staff member involved in bid evaluation discloses to another person any information concerning the evaluation and comparison of bid documents, the recommended candidate for winning the bid or any other information relating to bid evaluation, he shall be given a disciplinary warning, the money or things of value he received or accepted shall be confiscated, and he may also be fined not less than 3,000 yuan but not more than 50,000 yuan. The said member who commits the violation mentioned above shall be disqualified for membership of the committee and he may no longer take part in any bid evaluation of projects for which bid invitation is required by law. If a crime is constituted, criminal responsibility shall be pursued in accordance with law.

Article 57 Where a bid inviter decides on the bid winner from among people other than the candidates recommended by the bid evaluation committee in accordance with law, or a bid inviter decides on the bid winner on its own after all the bids for the project for which bid invitation is required by law have been rejected by the bid evaluation committee, the bid won shall be nullified. The bid inviter shall be ordered to make rectification and may be fined not less than 0.5 percent but not more than 1 percent of the value of the bid. The persons who are directly in charge and the other persons who are directly responsible shall be given sanctions in accordance with law.

Article 58 Where a bid winner transfers the bid won to others, or breaks it up into several parts and transfers them separately to others, or in violation of the provisions of this Law, subcontracts some major components or crucial work of the bid won to others, or where further subcontracting occurs, the transferring and subcontracting shall be invalid, and the said bid winner and subcontractor shall be fined not less than 0.5 percent but not more than 1 percent of the value of the parts transferred or subcontracted. The illegal gains, if any, shall be confiscated, and the bid winner and subcontractor shall be ordered to suspend operation for rectification. If the circumstances are serious, its business license shall be revoked by the administrative department of industry and commerce.

Article 59 Where a bid inviter and a bid winner fail to conclude a contract in accordance with the bid invitation documents and the bid documents of the bid winner, or where a bid inviter and a bid winner conclude an agreement contrary to the substantive contents of the contract, they shall be ordered to put it right and may be fined not less than 0.5 percent but not more than 1 percent of the value of the bid won.

Article 60 Where a bid winner fails to perform the contract signed with the bid inviter, its performance security shall be kept unrefunded. Where the losses caused to the bid inviter are larger than the amount of the security, it shall compensate for the excess amount. Where no such security is provided, it shall bear the liability for the losses caused to the bid inviter.

Where a bid winner fails to fulfil its obligations in accordance with the contract signed with the bid inviter, if the circumstances are serious, it shall be disqualified for two to five years from taking part in bidding for a project for which bid invitation is required by law and the matter shall be made known to the general public, or its business license shall be revoked by the administrative department of industry and commerce.

Where a contract cannot be fulfilled due to force majeure, the provisions of the preceding two paragraphs shall not be applicable.

Article 61 The administrative sanctions prescribed in this Chapter shall be decided by the relevant department of administration and supervision designated by the State Council, with the exception of those departments which this Law prescribes for enforcing administrative sanctions.

Article 62 Any unit that, in violation of the provisions of this Law, imposes limitations on a legal person or any other organization from another place or department or excludes it from taking part in bidding, designates a bid invitation agency for a bid inviter, compels a bid inviter to authorize a bid invitation agency to handle matters of bid invitation, or interferes with bid invitation and bidding activities by any other means shall be ordered to put it right. The persons who are directly in charge and the other persons who are directly responsible shall be given such sanctions as a disciplinary warning and recording of a demerit or a serious demerit in accordance with law. If the circumstances are serious, the persons shall be given sanctions such as demotion, removal from office and expulsion in accordance with law.

Where an individual, by taking advantage of his position and power, commits any of the illegal acts mentioned in the preceding paragraph shall be investigated for his responsibility in accordance with the provisions of the preceding paragraph.

Article 63 Where staff members of State organs who are responsible for administrative supervision over bid invitation and bidding activities in accordance with law engage in malpractices for personal gain, abuse their power or neglect their duty, which is serious enough to constitute a crime, they shall be pursued for criminal responsibility in accordance with law. If such act does not constitute a crime, administrative sanctions shall be imposed in accordance with law.

Article 64 Where a bid won is nullified because provisions of this Law is violated in inviting bids for a project as is required by law, a new bid winner shall be decided on from among other bidders in accordance with the requirements for winning a bid as prescribed in this Law, or bids shall be invited anew in accordance with this Law.

## Chapter VI Supplementary Provisions

Article 65 Any bidder or any other interested person who believes that the bid invitation and bidding activities do not comply with the relevant provisions of this Law shall have the right to raise objections to the bid inviter or to file a complaint with the relevant department of administrative supervision.

Article 66 Special projects that concern State security or secret, emergency rescue and disaster relief or that involve the use of relief funds for providing work as a form of relief or the need to employ farmers as workers which therefore are not suited to bid invitation may be subject to no bid invitation as prescribed in the relevant State regulations.

Article 67 Where in the case of projects for which loans or funds are provided by international organizations or governments of other countries, the lenders or fund-providers have formulated differing regulations on the specific requirements for bid invitation and on the procedures, their regulations may be applicable, with the exception of the regulations that are against the public interests of the People's Republic of China.

Article 68 This Law shall go into force as of January 1, 2000.

# **Tort Liability Law of the People's Republic of China**

Adopted at the 12th Meeting of the Standing Committee of the Eleventh National People's Congress on December 26, 2009

## Contents

Chapter I General Provisions

Chapter II Constitution and Mode of Liability

Chapter III Non-liability and Diminished Liability

Chapter IV Special Provisions on the Subject of Liability

Chapter V Product Liability

Chapter VI Motor Vehicle Accident Liability

Chapter VII Medical Damage Liability

Chapter VIII Environmental Pollution Liability

Chapter IX High Risk Liability

Chapter X Liability for Damage Caused by Domesticated Animals

Chapter XI Object Damage Liability

Chapter XII Supplementary Provisions

## Chapter I General Provisions

Article 1 This Law is formulated for the purposes of protecting the legitimate rights and interests of civil subjects, defining tort liability, preventing and punishing acts of tort, and promoting social harmony and stability.

Article 2 Tort liability shall be borne in accordance with this Law for any infringement of civil rights.

“Civil rights” as mentioned in this Law refer to personal and property rights and interests, including, inter alia, the right to live, right to health, right of name, right of reputation, right of honor, right to portrait, right to privacy, right of self-determination in marriage, guardianship, ownership, usufructuary right, real right for security, copyright, patent right, exclusive right to use trademark, right of discovery, stock rights, and right of inheritance.

Article 3 The infringed shall be entitled to request the tortfeasor to bear tort liability.

Article 4 The tortfeasor shall bear administrative or criminal liability for the same act, and this shall not affect the bearing of tort liability in accordance with the law.

In the event that the assets of the tortfeasor are insufficient to pay tort liability and administrative or criminal liability for the same act, the tortfeasor shall first and foremost bear tort liability.

Article 5 Where other laws provide special provisions on tort liability, such provisions shall prevail.

## Chapter II Constitution and Mode of Liability

Article 6 A person shall bear tort liability for the infringement of other's civil rights out of that person's fault.

If a person is presumed to be at fault in accordance with the law and that person is unable to prove otherwise, that person shall bear tort liability.

Article 7 If a person infringes upon the civil rights of others through his actions and he is liable for tort in accordance with the provisions of the law, regardless of whether he is at fault, such provisions shall prevail.

Article 8 If two or more persons jointly infringe on the rights of others resulting in damages, they shall bear joint and several liability.

Article 9 A person who aids or abets any other person in committing a tort shall be bear joint and several liability.

A person who aids and abets any other person with no or limited capacity for civil conduct in committing a tort shall bear liability for the tort; the guardian of the person with no or limited capacity for civil conduct shall bear corresponding liability if he fails in fulfilling his guardianship obligation.

Article 10 If an act by two or more persons endangers the safety of others and their property and the actions of one or more members in the said group result in damage to others, the tortfeasor(s) shall bear tort liability if they can be identified; if they cannot be identified, the persons committing the act shall bear joint and several liability.

Article 11 If acts of tort by two or more persons severally result in the same damage and the act of tort by each one of them is suffice to cause the full extent of the damage, the said persons shall bear joint and several liability.

Article 12 If acts of tort by two or more persons severally result in the same damage and their respective liability can be determined, the said persons shall bear liability correspondingly. If their respective liability cannot be determined, the said persons shall bear equal liability for damages.

Article 13 If tortfeasors incur joint and several liability in accordance with the law, the infringed shall be entitled to request all or any one of the persons subject to joint and several liability to bear liability.

Article 14 The amount of compensation to be incurred by the persons subject to joint and several liability shall be determined according to their respective liability. If the degree of their respective liability cannot be determined, compensation liability shall be borne equally.

If the compensation made by a person subject to joint and several liability exceeds the rightful amount due, they shall be entitled to claim reimbursement from the other person(s) subject to joint and several liability.

Article 15 Tort liability is mainly borne through:

- (1) The cessation of the infringing act;
- (2) The removal of an obstacle;
- (3) The elimination of danger;
- (4) The restitution of property;
- (5) Restitution to the original state;
- (6) Compensation for loss;
- (7) A formal apology; and
- (8) The elimination of ill effects and the restoration of reputation.

The above can be borne singularly or in combination.

Article 16 In the event of tort resulting in bodily harm, compensation in the form of, inter alia, medical, nursing and transportation expenses shall be made as reasonable payments for treatment and rehabilitation expenses and for income loss from loss of working time. In the event of tort resulting in disability, further compensation shall be made in the form of expenses for auxiliary appliances for living and disability compensation. In the event of tort resulting in death, further compensation shall be made in the form of funeral expenses and death compensation.

Article 17 In the event of multiple deaths arising from the same tort, compensation of equal amounts may be determined.

Article 18 Immediate relatives of a person killed by a tortfeasor shall be entitled to seek that the tortfeasor bear tort liability. If the infringed is an organization and the said organization is separated or merged, the organization with inheritance rights thereto shall be entitled to seek the tortfeasor to bear tort liability.

In the event of death of the infringed, the person who has paid reasonable expenses of the infringed in the form of, inter alia, medical fees and funeral expenses shall be entitled to seek compensation from the tortfeasor, except for expenses already borne by the tortfeasor.

Article 19 For the infringement of property, property loss or damage shall be calculated based on the market rate at the time when the loss or damage is incurred or by other methods.

Article 20 Loss compensation shall be made according to the loss suffered by the infringed for loss of assets arising from infringement upon personal rights and interests. If such loss is indeterminable and the tortfeasor gains from the tort, compensation shall be made on the basis of such gains; if such gains are indeterminable and the infringed and tortfeasor fail to reach an agreement on the amount of compensation, either may file a lawsuit with the people's court and the court shall determine the amount of compensation based on the actual situation.

Article 21 For acts of tort that endanger personal safety and the safety of the property of others, the infringed may seek the tortfeasor to bear tort liability through, inter alia, the cessation of the infringing act, the removal of any obstacles and the elimination of danger.

Article 22 For acts of tort that infringe on personal rights and interests and result in serious mental injury, the infringed may seek compensation for mental injury.

Article 23 If a person suffers damages in the course of preventing or deterring the infringement of other's civil rights, the tortfeasor shall bear liability. If the tortfeasor flees or is in no capacity to assume liability and the infringed seeks compensation, the beneficiary shall make suitable compensation.

Article 24 If damage is neither the victim nor the tortfeasor's fault, the loss may be borne by both parties according to the actual circumstances.

Article 25 After damage occurs, the parties concerned may negotiate the payment method for compensation. If they fail to reach a consensus compensation shall be paid in a lump sum. If there is any genuine difficulty in making a lump sum payment, compensation may be made in installments provided that a corresponding guarantee is provided.

### Chapter III Non-liability and Diminished Liability

Article 26 The liability of the tortfeasor may be diminished if the infringed is also at fault for the damage.

Article 27 The tortfeasor shall not bear liability for any damage intentionally caused by the victim.

Article 28 For damage caused by a third party, the said party shall bear tort liability.

Article 29 No liability shall be borne for damages caused by force majeure. If the law otherwise provides, such provisions shall prevail.



Article 30 No liability shall be borne for damages arising from justifiable defense. A person who acts in justifiable defense shall bear appropriate liability for undue damages arising from justifiable defense that exceeds the limits of what is necessary.

Article 31 For damages arising from emergency avoidance of danger, the person giving rise to such danger shall bear liability. If such danger arises from natural factors, the person who undertakes emergency avoidance of danger shall not bear liability, or shall appropriately pay compensation. The person who undertakes emergency avoidance of danger shall bear appropriate liability if inappropriate measures are taken for such avoidance or if the measures taken exceed the limits of what is necessary, resulting in undue damages.

#### Chapter IV Special Provisions on the Subject of Liability

Article 32 For damages caused by a person with no or limited capacity for civil conduct, their guardian shall bear tort liability. The tort liability of the said guardian may be diminished if they have fulfilled their guardianship obligation.

For damages caused by a person with no or limited capacity for civil conduct who owns assets, compensation shall be made from the said assets. Any shortfall in compensation shall be made by their guardian.

Article 33 If a person with full civil capacity causes any damage from a temporary loss of consciousness or control through his wrongdoing, he shall bear tort liability. If there is no wrongdoing, compensation shall appropriately be made to the victim by the tortfeasor on the basis of the tortfeasor's economic status.

If a person with full civil capacity causes any damage from a temporary loss of consciousness or control due to drinking or abuse of narcotic drugs or psychotropic substances, they shall bear tort liability.

Article 34 If an employee causes damage to others in carrying out a work task, the employing organization shall bear tort liability.

While dispatching labor, if the employee dispatched causes damage to others in carrying out a work task, the organization accepting the dispatched labor shall bear tort liability. If the dispatching organization is at fault, it shall bear the corresponding additional liability.

Article 35 For labor relations between individuals, if the party providing labor causes damage to others due to the labor provided, the party receiving such labor service shall bear tort liability. If the party providing labor suffers damage due to the labor, either party shall bear liability based on their own wrongdoing.

Article 36 Internet users and internet service providers shall bear tort liability if they utilize the internet to infringe upon civil rights of others.

If an internet user commits tort through internet services, the infringed shall be entitled to inform the internet service provider to take necessary measures, including, inter alia, deletion, blocking and disconnection. If the internet service provider fails to take necessary measures in a timely manner upon notification, it shall be jointly and severally liable with the said internet user for the extended damage.

If an internet service provider is aware that an internet user is infringing on the civil rights and interests of others through its internet services and fails to take necessary measures, it shall be jointly and severally liable with the said internet user for such infringement.

Article 37 Managers of public places, including, inter alia, hotels, shopping malls, banks, stations and places of entertainment, and organizers of mass activities shall bear tort liability for damages to others arising from their failure to fulfill security obligations.

If the act of a third party results in damage to others, the said third party shall bear tort liability, and the manager or organizer shall bear the corresponding additional liability if the said managers or organizers has failed to fulfill their security obligations.

Article 38 For personal injury suffered by a person with no capacity for civil conduct during the course of studying or living in a kindergarten, school or other institution of learning, the kindergarten, school or institution of learning shall bear liability unless it proves that it has fulfilled its educational and managerial responsibilities.

Article 39 For personal injury suffered by a person with limited capacity for civil conduct during the course of studying or living in a school or other institution of learning, the school or institution of learning shall bear liability if it has failed to fulfill its educational and managerial responsibilities.

Article 40 If personal injury is inflicted on a person with no or limited capacity for civil conduct during the course of studying or living in a kindergarten, school or any other institution of learning by a person, other than an employee of the kindergarten, school or institution of learning, the tortfeasor shall bear the tort liability. The kindergarten, school or institution of learning shall be liable for corresponding additional liability if it has failed to fulfill its managerial responsibilities.

## Chapter V Product Liability

Article 41 A manufacturer shall bear tort liability if its product causes damage to others due to a defect.

Article 42 If a product is defective through the fault of the seller and results in damage to others, the seller shall bear tort liability.

If the seller is unable to name the manufacturer or supplier of the defective product, the seller shall bear tort liability. Article 43 In the event of damage being caused by a defective product, the infringed may seek compensation from the manufacturer and seller of the said product.

If a defect is caused by the manufacturer, the seller shall be entitled to seek reimbursement from the manufacturer for compensation they have made.

If a defect in a product occurs through the fault of the seller, the manufacturer shall be entitled to seek reimbursement from the seller for compensation they have made.

Article 44 If a product is defective through the fault of a third party, including, inter alia, the transporter or the party providing storage, and results in damage to others, the manufacturer or seller of the said product shall be entitled to seek reimbursement from the relevant third party for compensation they have made.

Article 45 If a defective product endangers the personal safety or property of others, the infringed shall be entitled to seek the manufacturer or seller to assume tort liability through, inter alia, the removal of an obstacle and the elimination of danger.

Article 46 If a defect is found in a product after it has been distributed, the manufacturer and the seller shall take remedial measures in a timely manner including, inter alia, warnings and recalls. In the event of damage arising from a failure to take remedial measures in a timely manner or taking inadequate remedial measures, they shall bear tort liability.

Article 47 In the event of death or serious damage to health arising from the manufacture or sale of a product known to be defective, the infringed shall be entitled to claim corresponding punitive compensation.

## Chapter VI Motor Vehicle Accident Liability

Article 48 Tort liability shall be borne for damages arising from traffic accidents involving motor vehicles in accordance with the relevant provisions of the Law on Road Traffic Safety.

Article 49 In the event of, inter alia, rental or loan of a motor vehicle in which the owner is not the user, the insurance company shall pay compensation within the limits of compulsory motor vehicle insurance liability for any traffic accident that the said motor vehicle user is accountable for. The user of the motor vehicle shall bear liability for any shortfall in compensation. If the owner of the motor vehicle is accountable for the damage, they shall bear the corresponding compensation liability.

Article 50 If a motor vehicle is involved in a traffic accident following a transfer through, inter alia, a sale and purchase transaction between parties and the said vehicle has been handed over but the transfer in ownership has not yet been registered, the insurance company shall pay compensation within the limits of compulsory motor vehicle insurance liability for any traffic accident that the said motor vehicle user is accountable for. The assignee shall bear liability for any shortfall in compensation.

Article 51 If an assembled vehicle or a vehicle that meets scrapping standards is transferred through, inter alia, a sale and purchase transaction, the assignor and the assignee shall be jointly and severally liable for any damage arising from a traffic accident caused by the said vehicle.

Article 52 For any damage arising from a traffic accident caused by a stolen or hijacked motor vehicle, the person that stole or hijacked the said motor vehicle shall be liable for compensation. An insurance company that pays rescue fees in advance within the limits of compulsory motor vehicle insurance liability shall be entitled to seek reimbursement from the party responsible for the traffic accident.

Article 53 If the driver of a motor vehicle flees the scene after a traffic accident and the said vehicle is under compulsory insurance, the insurance company shall pay compensation within the limits of compulsory motor vehicle insurance liability. If the motor vehicle is unknown or if it is not under compulsory insurance, the social assistance fund for road traffic accidents shall make payment in advance for necessary expenses, including, inter alia, expenses for the emergency rescue of the infringed or funeral expenses, and the management organization of the said fund shall be entitled to seek reimbursement from the party responsible for the accident.

## Chapter VII Medical Damage Liability

Article 54 If any medical or its medical personnel is responsible for damage inflicted on a patient during the course of diagnosis and treatment, the medical organization shall be liable for compensation.

Article 55 Medical personnel shall explain to a patient in the course of diagnosis and treatment their condition and medical measures. If surgery, special examination or special treatment is required, medical personnel shall explain to a patient, inter alia, the medical risks and alternative treatment plans in a timely manner and obtain their written consent. If it is not suitable to explain the same to a patient, medical personnel shall do so with the immediate relatives of a patient and obtain their written consent.

If medical personnel fail to fulfill their obligations stated in the preceding paragraph and cause damage to a patient, the medical organization shall be liable for compensation.

Article 56 If the opinion of a patient or their immediate relatives cannot be consulted due to an emergency, including, inter alia, the resuscitation of a patient in a critical condition, the appropriate medical treatment may be administered immediately upon the approval of the person in charge or authorized person in charge of the medical organization.

Article 57 If medical personnel, in the course of diagnosis and treatment, fail to fulfill their obligations in line with prevailing medical standards and cause damage to a patient, the medical organization shall be liable for compensation.

Article 58 A medical organization shall be presumed to be at fault if damage is inflicted on a patient in any of the following circumstances:

- (1) Violation of provisions of laws, administrative regulations, rules, etc., relating to diagnostic and treatment practices;
- (2) Concealment of or refusal to provide medical records related to the dispute; or
- (3) Forgery, falsification or destruction of medical records.

Article 59 If a patient suffers damage due to defective drugs, disinfectants or medical devices, or from transfusing blood that does not meet certain standards, they may seek compensation from the manufacturer or blood-supplying organization as well as from the medical organization. If the said patient seeks compensation from the medical organization, the medical organization is entitled to claim reimbursement from the manufacturer or blood-supplying organization liable for the damage after compensation.

Article 60 A medical organization shall not be liable for compensation in any of the following circumstances involving damage to a patient:

- (1) A patient or their immediate relative(s) refuses to cooperate with the medical organization in diagnosis and treatment that comply with diagnostic and treatment practices;
- (2) Medical personnel have reasonably fulfilled their diagnostic and treatment obligations in an emergency, including, inter alia, the resuscitation of a patient who is approaching death; or
- (3) Difficulties in diagnosis and treatment given the limitation of prevailing medical standards.

In the circumstance specified in Subparagraph (1) of the preceding paragraph, if the medical organization and its medical personnel are also at fault, the medical organization shall bear the corresponding compensation liability.

Article 61 Medical organizations and their medical personnel shall fill in and ensure the safekeeping of inpatient records, physicians' order sheets, examination reports, surgery and anesthesia records, pathological information, nursing records, medical fees and other medical records in accordance with regulations.

Medical organizations shall accede to the requests of a patient to access and duplicate the medical records specified in the preceding paragraph.

Article 62 Medical organizations and their medical personnel shall ensure the privacy and confidentiality of patients. Medical organizations and their medical personnel shall bear tort liability if they disclose a patient's private matters or medical records without the patient's consent and cause damage to the patient.

Article 63 Medical organizations and their medical personnel shall not carry out unnecessary check-ups in violation of diagnostic and treatment practices.

Article 64 The legitimate rights and interests of medical organizations and their medical personnel are protected by law. Anyone who interferes in medical administration and hinders the work or lives of medical personnel shall bear legal liability in accordance with the law.

## Chapter VIII Environmental Pollution Liability

Article 65 For damages caused by pollution of the environment, the polluter shall bear tort liability.

Article 66 For disputes arising from pollution of the environment, the polluter shall bear the burden of proving non-liability or diminished liability in accordance with the provisions of the law and the non-existence of a causal relationship between their actions and the damage.

Article 67 If the environment is polluted by two or more persons, the degree of liability shall be determined by factors including, inter alia, the type of pollutants and the quantity emitted.

Article 68 For damages caused by environmental pollution through the wrongdoing of a third party, the infringed may seek compensation from the polluter and from the said third party. After making compensation, the said polluter shall be entitled to seek reimbursement from the said third party.

## Chapter IX High Risk Liability

Article 69 A person who causes damage to others by engaging in high-risk work shall bear tort liability.

Article 70 If damage is inflicted on others from the occurrence of a nuclear accident at a civilian nuclear facility, the operator of the said facility shall bear tort liability unless he can prove that the damage was caused by circumstances such as war or that it was intentionally caused by the victim.

Article 71 If a civilian aircraft causes damage to others, the operator of the said aircraft shall bear tort liability unless he can prove that the damage was intentionally caused by the victim.

Article 72 If damage to others arises from the possession or use of high risk materials, including, inter alia, flammable, explosive, poisonous or radioactive materials, the person using or possessing such materials shall bear tort liability unless they can prove that the damage was caused by the intentional action of the victim or by force majeure. If the infringed is grossly negligent with respect to the occurrence of the damage, the liability of the said person using or possessing the said materials may be diminished.

Article 73 If damage to others arises from operations conducted high above the ground, those involving high pressure or high voltage or underground excavation activities or the use of high-speed rail transport, the operator shall bear tort liability unless they can prove that the damage

was caused by the intentional action of the victim or by force majeure. If the infringed is negligent with respect to the occurrence of the damage, the liability of the said operator may be diminished.

Article 74 If damage to others arises from the loss or abandonment of a high-risk object, the owner of the said object shall bear tort liability. If the said object has been handed to a third party by the owner for management, the manager shall bear tort liability. If the owner is at fault, they shall bear joint and several liability with the manager.

Article 75 If damage to others arises from the illegal possession of highly dangerous objects, the illegal possessor shall bear tort liability. If the owner or manager fails to prove that he has exercised a high duty of care in preventing the illegal possession, he shall bear joint and several liability with the illegal possessor.

Article 76 If damage arises from unauthorized entry into a high-risk activity area or a storage area for high-risk materials, the liability of the manager may be diminished or no liability shall be borne if they have taken safety precautions and fulfilled their obligation of providing warnings.

Article 77 If there is a compensation limit in accordance with the provisions of the law for bearing high-risk liability, the provisions of the law shall prevail.

## Chapter X Liability for Damage Caused by Domesticated Animals

Article 78 If damage to others is caused by a domesticated animal, the keeper or manager shall bear tort liability. His liability may be diminished or no liability shall be borne if it can be proven that the damage was caused by an intentional act or gross negligence on the part of the infringed.

Article 79 If damage to others is caused by a violation of management regulations in which animal safety measures are not adopted, the keeper or manager shall bear tort liability.

Article 80 If damage to others is caused by dangerous animals such as violent dogs whose rearing is banned, the keeper or manager shall bear tort liability.

Article 81 If damage to others is caused by zoo animals, the zoo shall bear tort liability unless it can prove that it has fulfilled its management responsibilities.

Article 82 If damage to others is caused by abandoned or escaped animals during the period of abandonment or escape, the original keeper or manager shall bear tort liability.

Article 83 If damage to others is caused by an animal through the wrongdoing of a third party, the infringed may seek compensation from the keeper or manager of the said animal or from the said third party. The said keeper or manager shall be entitled to seek reimbursement from the said third party after compensation.

Article 84 Animals shall be kept in compliance with the law, with respect for social ethics and shall not encroach on the lives of others.

## Chapter XI Object Damage Liability

Article 85 For damages to others arising from falling buildings, structures or other facilities, or objects placed on or suspended from the same, the owner, manager or user shall bear tort liability if he is unable to prove that they are not at fault.

The said owner, manager or user shall be entitled to claim reimbursement from other liable parties, if any, after compensation.

Article 86 The undertaking entity and construction entity shall be jointly and severally liable for damage to others arising from the collapse of buildings, structures or other facilities. The said entities shall be entitled to claim reimbursement from other liable parties, if any, after compensation.

For damage to others arising from the collapse of buildings, structures or other facilities which are caused by other liable parties, such other parties shall bear tort liability.

Article 87 If damage to others is caused by objects thrown from buildings or by objects that have fallen from buildings and the specific tortfeasor cannot be determined, users of the building that are likely tortfeasors shall pay compensation unless they can prove that they are not the tortfeasor.

Article 88 If damage to others is caused by the collapse of stacked objects, the person who stacked the objects shall bear tort liability if he is unable to prove that he is not at fault.

Article 89 If damage to others is caused by objects that are stacked, dumped or scattered on public roads and are obstructing passage, the relevant entity or individual shall bear tort liability.

Article 90 If damage to others is caused by broken trees, the owner or manager of the said trees shall bear tort liability if he is unable to prove that they are not at fault.

Article 91 If damage to others is caused by, inter alia, trenching in public places or on roads, or the repair or installation of underground facilities, without setting up clear signs or taking safety precautions, the person undertaking the said works shall bear tort liability.

If damage is caused by underground facilities including, inter alia, manholes, the manager shall bear tort liability if he is unable to prove that they have fulfilled their management responsibilities.

## Chapter XII Supplementary Provisions

Article 92 This Law shall go into effect as of July 1, 2010.



## **Companies Law of the People's Republic of China**

Adopted at the 5th Meeting of the Standing Committee of the Eighth National People's Congress on December 29, 1993; amended for the first time in accordance with the Decision on Revision of the Company Law of the People's Republic of China made at the 13th Meeting of the Standing Committee of the Ninth National People's Congress on December 25, 1999; amended for the second time in accordance with the Decision on Revision of the Company Law of the People's Republic of China made at the 11th Meeting of the Standing Committee of the Tenth National People's Congress on August 28, 2004; and revised at the 18th Meeting of the Standing Committee of the Tenth National People's Congress on October 27, 2005

### Contents

#### Chapter I General Provisions

#### Chapter II Incorporation and Organizational Structure of a Company with Limited Liability

##### Section 1 Incorporation

##### Section 2 Organizational Structure

##### Section 3 Special Provisions on One-person Companies with Limited Liability

##### Section 4 Special Provisions on Wholly Stated-owned Companies

#### Chapter III Equity Transfer of Companies with Limited Liability

#### Chapter IV Incorporation and Organizational Structure of a Company Limited by Shares

##### Section 1 Incorporation

##### Section 2 Shareholders General Assembly

##### Section 3 Board of Directors, and the Manager

##### Section 4 Board of Supervisors

##### Section 5 Special Provisions on Organizational Structure of Listed Companies

#### Chapter V Issue and Transfer of Shares of Companies Limited by Shares

##### Section 1 Issue of Shares

##### Section 2 Transfer of Shares

#### Chapter VI Qualifications and Obligations of Directors, Supervisors and Senior Managers of Companies

#### Chapter VII Corporate Bonds

Chapter VIII Financial Affairs and Accounting of Companies

Chapter IX Merger and Division of Companies, Increase and Reduction of Capital

Chapter X Dissolution and Liquidation of Companies

Chapter XI Branches of Foreign Companies

Chapter XII Legal Responsibility

Chapter XIII Supplementary Provisions

Chapter I General Provisions

Article 1 This Law is enacted in order to standardize the organization and behavior of companies, to protect the legitimate rights and interests of companies, shareholders and creditors, to maintain the socio-economic order and to promote the development of the socialist market economy.

Article 2 For the purposes of this Law, the term company refers to a company with limited liability or a company limited by shares incorporated within the territory of the People's Republic of China in accordance with this Law.

Article 3 A company is an enterprise legal person, which has independent property of a legal person and enjoys the property rights of a legal person. The company shall be liable for its debts to the extent of its entire property.

Shareholders of a company with limited liability shall assume liability towards the company to the extent of the capital contributions subscribed respectively by them; and the shareholders of a company limited by shares shall assume liability towards the company to the extent of the shares subscribed respectively by them.

Article 4 The shareholders of a company shall, in accordance with law, enjoy such rights as benefiting from the assets of the company, participation in making major decisions and selection of managerial personnel.

Article 5 In its operational activities, a company shall abide by laws and administrative regulations, observe social morals and commercial ethics, persist in honesty and good faith, accept supervision by the government and the public, and assume social responsibility.

The legitimate rights and interests of companies shall be protected by law, and shall be inviolable.

Article 6 Where an entity intends to incorporate a company, it shall, in accordance with law, apply to a company registration authority for registration of such incorporation. Where the conditions for incorporation provided for by this Law are met, the company registration authority shall have the company registered as a company with limited liability or a company limited by shares; and

where the said conditions are not met, the company shall not be registered as one with limited liability or as one limited by shares.

Where laws or administrative regulations provide that approval is required for incorporation of a company, the procedures of approval shall be completed according to law prior to registration of the company.

The public may apply to the company registration authority for inquiry about the items registered by a company, and the authority shall provide services for such inquiry.

Article 7 The company registration authority shall issue a business license to a company incorporated according to law. The date on which the business license is issued shall be the date on which a company is incorporated.

In the business license of a company shall clearly be stated such items as the name, domicile, registered capital, actually received capital, scope of business and name of the legal representative of the company.

Where the items stated in the business license of a company are altered, the company shall have the alterations registered according to law, and the company registration authority shall renew its business license.

Article 8 A company with limited liability incorporated according to this Law shall have the words “company with limited liability” or “limited company” indicated in its name.

A company limited by shares incorporated according to this Law shall have the words “company limited by shares” or “company by shares” indicated in its name.

Article 9 Where a company with limited liability is to be changed into a company limited by shares, it shall meet the conditions of a company limited by shares provided for by this Law. Where a company limited by shares is to be changed into a company with limited liability, it shall meet the conditions of a company with limited liability provided for by this Law.

Where a company with limited liability is changed into a company limited by shares, or a company limited by shares is changed into a company with limited liability, the rights of credit and the debts of the company prior to the change shall be inherited by the company after the change.

Article 10 The domicile of a company shall be the place where its main administrative organization is located.

Article 11 Articles of association shall be formulated according to law when a company is incorporated. The articles of association of a company shall have binding force on the company, its shareholders, directors, supervisors and senior managers.

Article 12 The business scope of a company shall be defined in the company’s articles of association, and shall be registered according to law. A company may revise its articles of association and alter its scope of business, but shall have such revision and alteration registered.

The items within the scope of business of a company that are subject to approval as provided for by laws and administrative regulations shall be submitted for approval according to law.

Article 13 The chairman of the board of directors, the executive director or the manager shall, in accordance with the provisions of a company's articles of association, serve as the legal representative of the company, which shall be registered according to law. Where the legal representative of a company is replaced, the company shall have such replacement registered.

Article 14 A company may establish branches. Where a company intends to establish a branch, it shall apply for registration to the company registration authority, in order to obtain a business license for the branch. However, such a branch shall not possess the status of a legal person, and its civil liabilities shall be borne by the company.

A company may establish subsidiaries, which shall possess the status of legal persons, and shall independently bear civil liabilities according to law.

Article 15 A company may invest in other enterprises; however, it shall not become the investor that assumes joint and several liability for the debts of the enterprises in which it invests, except where otherwise provided for by law.

Article 16 Where a company intends to invest in another enterprise or provide guarantee for another entity, the matter shall, in accordance with the provisions of the company's articles of association, be subject to a resolution adopted by the board of directors or the shareholders assembly or the shareholders general assembly; and where norms for the gross amount of investments or guarantees and for the amount of a single investment or guarantee are specified in the company's articles of association, such norms shall not be exceeded.

Where a company intends to provide a guarantee for its shareholder or its actual controller, the matter shall be subject to a resolution adopted by its shareholders assembly or shareholders general assembly.

The shareholder specified in the preceding paragraph or the shareholder dominated by the actual controller specified in the preceding paragraph shall not participate in the vote on the matter specified in the preceding paragraph. The resolution on such matter shall be adopted if it is voted for by other shareholders present at the meeting who hold more than half of the voting rights.

Article 17 Companies shall protect the lawful rights and interests of their staff and workers, sign labor contracts with them according to law, participate in social insurance, and improve occupational protection so as to achieve safety in production.

Companies shall, in various forms, improve vocational education and on-the-job training among their staff and workers so as to enhance their quality.

Article 18 The staff and workers of a company shall, in accordance with the Trade Union Law of the People's Republic of China, organize a trade union to carry out trade union activities and protect the lawful rights and interests of the staff and workers. The company shall provide the trade union of the company with the conditions necessary for carrying out its activities. The trade union of a company shall represent the staff and workers to sign with the company collective

contracts on such items as the payment for work done, working hours, welfare and insurance benefits as well as occupational safety and health of the staff and workers according to law.

Companies shall, through the conference of the representatives of the staff and workers or other forms, carry out democratic management in accordance with the provisions of the Constitution and relevant laws.

When a company discusses to make decisions on structural reform or on major issues in business operation, or formulate important rules and regulations, it shall listen to the opinions of the trade union, and shall listen to the opinions and proposals of the staff and workers through the conference of the representatives of staff and workers or other forms.

Article 19 In companies, Communist Party organizations shall, in accordance with the provisions of the Constitution of the Communist Party of China, be set up to carry out activities of the Party. Companies shall provide the necessary conditions for the Party organizations to carry out their activities.

Article 20 The shareholder of a company shall observe laws, administrative regulations and the company's articles of association, exercise the rights of a shareholder according to law, and shall not abuse his rights to damage the interests of the company or other shareholders; and he shall not abuse the independent status of the company as a legal person or the limited liability of shareholders to damage the interests of the creditors of the company.

Where the shareholder of a company abuses the rights of shareholders and thus causes losses to the company or other shareholders, he shall be liable for compensation according to law.

Where the shareholder of a company abuses the independent status of the company as a legal person or the limited liability of shareholders, evades debts and thus seriously damages the interests of the creditors of the company, he shall assume joint and several liability for the debts of the company.

Article 21 Proprietary shareholders, the actual controllers, directors, supervisors and senior managers of a company shall not take advantage of their affiliated relations to damage the interests of the company.

A person who, in violation of the provisions of the preceding paragraph, causes losses to a company shall be liable for compensation.

Article 22 The resolution adopted by the shareholders assembly or the shareholders general assembly or the board of directors of a company, which in content violates laws or administrative regulations, shall be invalid.

Where the procedures for convening the meeting of the shareholders assembly or the shareholders general assembly, or the board of directors, or the voting formulas are against laws, administrative regulations or the articles of association of a company, or the content of the resolution adopted is against the company's articles of association, the shareholders may, within 60 days from the date the resolution is adopted, request the people's court to rescind the resolution.

Where shareholders take legal proceedings in accordance with the provisions of the preceding paragraph, the people's court may, upon request of the company, demand the shareholders to provide appropriate guarantee.

Where a company has registered for alteration in accordance with the resolution adopted by the shareholders assembly, the shareholders general assembly or the board of directors, and the people's court declares the resolution invalid or rescinds it, the company shall apply for cancellation of the registration for such alteration.

## Chapter II Incorporation and Organizational Structure of a Company with Limited Liability

### Section 1 Incorporation

Article 23 The following conditions shall be met for the incorporation of a company with limited liability:

- (1) The number of shareholders conforms to the statutory number;
- (2) The capital contributions of the shareholders reach the statutory minimum amount of capital;
- (3) The shareholders have jointly formulated the articles of association;
- (4) The company has its name and has established an organizational structure in conformity with the requirements for a company with limited liability; and
- (5) The company has its own domicile.

Article 24 A company with limited liability shall be jointly invested in and incorporated by not more than 50 shareholders.

Article 25 The articles of association of a company with limited liability shall specify the following items:

- (1) the name and domicile of the company;
- (2) the scope of business of the company;
- (3) the registered capital of the company;
- (4) the names or titles of the shareholders;
- (5) the forms of capital contributions, the amounts and dates of capital contributions made by shareholders;
- (6) the bodies of the company, and the measures for their establishment, their functions and powers, as well as the rules of procedure;

(7) the legal representative of the company; and

(8) other items which the shareholders assembly deems necessary to be specified.

The shareholders shall sign their names on and affix their seals to the company's articles of association.

Article 26 The registered capital of a company with limited liability shall be the amount of capital contributions subscribed for by all of its shareholders, as is registered with the company registration authority. The amount of the initial capital contributions made by all of the shareholders of the company shall be not less than 20 percent of the company's registered capital, or not less than the statutory minimum amount of the registered capital either, and the remainder shall be paid for in full by the shareholders within two years from the date the company is established; and in the case of an investment company, it may pay for the remainder in full within five years.

The minimum amount of the registered capital of a company with limited liability shall be RMB 30,000 yuan. Where a greater amount is provided for by laws or administrative regulations, such provision shall prevail.

Article 27 A shareholder may make his capital contributions in currency or do so by contributing such non-currency property as material objects, intellectual property rights and land-use rights that can be evaluated in currency and can be transferred according to law, except for the property that is not allowed to be used as capital contributions, as is provided for by laws or administrative regulations.

Non-currency property used for capital contributions shall be evaluated and verified, and shall not be overvalued or undervalued. Where laws or administrative regulations provide otherwise, those provisions shall prevail.

The amount of capital contributions made by all of the shareholders in currency shall not be less than 30 percent of the registered capital of a company with limited liability.

Article 28 A shareholder shall pay, on schedule and in full, the amount of the capital contributions subscribed for in accordance with the provisions of the articles of association of a company. Where a shareholder makes capital contributions in currency, he shall deposit the full amount of such capital contributions in currency in the bank account opened by the company with limited liability; and where a shareholder makes capital contributions with non-currency property, he shall, according to law, go through the formalities for the transfer of his property rights.

Where a shareholder fails to make capital contributions in accordance with the provisions of the preceding paragraph, in addition to paying to the company of his portion of the capital contributions in full, he shall be liable for breach of contract towards the shareholders who have, on schedule and in full, made their capital contributions.

Article 29 After the shareholders have made their capital contributions, such capital contributions shall be subject to capital verification by a capital verification authority set up according to law, which shall issue capital verification certificates.

Article 30 After the initial capital contributions made by shareholders have been verified by a capital verification authority set up according to law, a representative designated by all the shareholders or a proxy jointly entrusted by them shall submit to the company registration authority such documents as a written application for registration of the company, the company's articles of association and the capital verification certificates, in order to apply for registration of the incorporation of the company.

Article 31 Where after the incorporation of a company with limited liability, it is discovered that the actual amount of the value of the non-currency property used as capital contributions for the incorporation of the company is obviously less than the amount of the value prescribed in the company's articles of association, the shareholders that made such contributions shall make up the difference; and the others who are shareholders at the time of the incorporation of the company shall bear joint and several liability therefor.

Article 32 After a company with limited liability is incorporated, it shall issue investment certificates to its shareholders.

In an investment certificate the following items shall be specified:

- (1) the name of the company;
- (2) the date on which the company is incorporated;
- (3) the registered capital of the company;
- (4) the name or title of the shareholder, the amount and date of capital contributions; and
- (5) the serial number of the investment certificate and the date of its verification and issue.

An investment certificate shall bear the seal of the company.

Article 33 A company with limited liability shall prepare a roster of its shareholders in which the following items shall be recorded:

- (1) the names or titles and domiciles of the shareholders;
- (2) the amounts of the capital contributions made by the shareholders; and
- (3) the serial numbers of their investment certificates.

The shareholders recorded in the roster of the shareholders may claim to exercise their rights in such capacity on the basis of the said roster.

The company shall register with a company registration authority the names or titles of its shareholders and the amount of their capital contributions; and where items of registration are altered, it shall have the registration altered accordingly. Without registration or without registration for alteration, the company shall not act against the third party.

Article 34 A shareholder shall have the right to consult and duplicate the company's articles of association, the minutes of the meeting of the shareholders assembly, the resolutions of the board



of directors, the resolutions of the board of supervisors, and the financial and accounting reports of the company.

A shareholder may request to consult the accounting books of the company. To do that, the shareholder shall submit a written request to the company and explain his purposes. Where the company deems, on reasonable grounds, that it is for illegitimate purposes that the shareholder requests to consult its accounting books, which may damage the lawful interests of the company, the company may refuse to provide its accounting books for the shareholder to consult, and shall, within 15 days from the date the shareholder submits the written request, give a written reply to the shareholder and state its reasons. Where the company refuses to provide its accounting books, the shareholder may request the people's court to demand the company to provide such books.

Article 35 Shareholders shall draw dividends in proportion to the capital contributions they made; and when a company increases its capital, its shareholders shall have the right of first refusal to make their subscriptions in proportion to the capital contributions they made, except where all the shareholders have agreed to draw the dividends not in proportion to their capital contributions or to do without the right of first refusal in proportion to their capital contributions when making subscriptions.

Article 36 Once a company is incorporated, its shareholders shall not secretly withdraw their capital contributions.

## Section 2 Organizational Structure

Article 37 The shareholders assembly of a company with limited liability shall be composed of all of its shareholders. The shareholders assembly is the organ of power of the company and shall exercise its functions and powers in accordance with this Law.

Article 38 The shareholders assembly shall exercise the following functions and powers:

- (1) to decide on the operational policy and investment plan of the company;
- (2) to elect or replace directors and supervisors who are not representatives of the staff and workers, and to decide on matters concerning the remuneration of the directors and supervisors;
- (3) to examine and approve reports of the board of directors;
- (4) to examine and approve reports of the board of supervisors or the supervisors;
- (5) to examine and approve the annual financial budget plan and final accounts plan of the company;
- (6) to examine and approve the company's plans for profit distribution and for making up losses;
- (7) to adopt resolutions on the increase or reduction of the registered capital of the company;
- (8) to adopt resolutions on the issue of corporate bonds;
- (9) to adopt resolutions on the merger, division, dissolution, liquidation or transformation of the company;

(10) to amend the articles of association of the company; and

(11) other functions and powers provided for in the company's articles of association.

Where the shareholders express, in writing, their unanimous agreement on the matters specified in the preceding paragraph, they may directly make a decision without convening a meeting of the shareholders assembly, and all the shareholders shall sign their names on and affix their seals to the documents of the decision.

Article 39 The first meeting of the shareholders assembly of a company shall be convened and presided over by the shareholder who has made the greatest capital contributions to the company, and he shall exercise the functions and powers in accordance with the provisions of this Law.

Article 40 The meetings of the shareholders assembly shall be divided into regular meetings and interim meetings.

Regular meetings shall be convened on schedule as specified by the provisions of the company's articles of association. An interim meeting shall be convened when it is proposed by shareholders representing one-tenth or more of the voting rights, by one-third or more of the directors, by the board of supervisors, or by the supervisors of a company without a board of supervisors.

Article 41 Where a board of directors is set up in a company with limited liability, the meeting of the shareholders assembly shall be convened by the board of directors and presided over by the chairman of the board of directors; where the chairman of the board cannot perform such function or fails to do so, the meeting shall be presided over by the vice-chairman of the board; and where the vice-chairman cannot perform the function or fails to do so, the meeting shall be presided over by a director jointly elected by half and more of the directors.

Where no board of directors is set up in a company with limited liability, the meeting of the shareholders assembly shall be convened and presided over by the executive director.

Where a board of directors or the executive director cannot perform or fails to perform the duty of convening a meeting the shareholders assembly, such a meeting shall be convened and presided over by a board of supervisors or the supervisor of a company where no board of supervisors is set up; and where the board of supervisors or the supervisor fails to convene and preside over the meeting, the shareholder representing one-tenth or more of the voting rights may convene and preside over such a meeting on his own.

Article 42 All the shareholders shall be notified 15 days prior to the convening of a meeting of the shareholders assembly, except where otherwise provided for by the company's articles of association or agreed upon by all of the shareholders.

The shareholders assembly shall keep minutes of the decisions that are made on the matters discussed at the meeting, and the shareholders present at the meeting shall sign the minutes.

Article 43 Shareholders shall exercise their voting rights at a meeting of the shareholders assembly in proportion to their respective capital contributions, except where otherwise provided for by the company's articles of association.

Article 44 The modes of meeting and voting procedures of the shareholders assembly shall, in addition to what is provided for in this Law, be stipulated by the company's articles of association.

Resolutions made at a meeting of the shareholders assembly on amendment to the company's articles of association, the increase or reduction of the registered capital, or on the merger, division, dissolution or transformation of the company shall be subject to adoption by the shareholders representing two-thirds or more of the voting rights.

Article 45 A company with limited liability shall set up a board of directors, which shall be composed of 3 to 13 members, except where otherwise provided for by Article 51 of this Law.

The members of the board of directors of a company with limited liability that is incorporated with the investment of two or more State-owned enterprises or two or more State-owned investment entities shall include representatives of the staff and workers of the company; and the members of the board of directors of other companies with limited liability may include representatives of the staff and workers of the companies. The representatives of the staff and workers on the board of directors shall be democratically elected by the staff and workers of the company through the conference of the representatives of the staff and workers, the general meeting of the staff and workers, or through other forms.

A board of directors shall have a chairman and may have a vice-chairman. The measures for the election of the chairman and vice-chairman of the board shall be stipulated by the company's articles of association.

Article 46 The term of office of a director shall be stipulated by the company's articles of association, but each term of office shall not exceed three years. A director may, if reelected upon expiration of his term of office, serve consecutive terms.

Where no election is conducted in time before the expiration of the term of office of a director, or the number of the directors is less than the statutory number due to the resignation of a director within his term of office, the existing director shall, before the director-elect takes office, continue to perform his duty as a director in accordance with the provisions of laws, administrative regulations or the company's articles of association.

Article 47 The board of directors shall be accountable to the shareholders assembly and exercise the following functions and powers:

- (1) to convene the meeting of the shareholders assembly, and to report on its work to the board;
- (2) to implement the resolutions adopted by the shareholders assembly;
- (3) to decide on the operational plans and investment plans of the company;
- (4) to draw up the annual financial budget plan and final accounts plan of the company;
- (5) to draw up plans for profit distribution and plans for making up losses of the company;
- (6) to draw up plans for the increase or reduction of the registered capital and the issue of corporate bonds of the company;

- (7) to draw up plans for the merger, division, dissolution and transformation of the company;
- (8) to decide on the establishment of the internal administrative bodies of the company;
- (9) to decide on the appointment or dismissal of the manager of the company and the matters concerning his remuneration, and upon recommendation of the manager, decide on the appointment or dismissal of the deputy manager(s) and persons in charge of the financial affairs of the company, and on the matters concerning their remuneration;
- (10) to formulate the basic management system of the company; and
- (11) to exercise other functions and powers stipulated by the company's articles of association.

Article 48 The meeting of a board of directors shall be convened and presided over by the chairman of the board; where the chairman of the board cannot perform such functions or fails to do so, the meeting shall be convened and presided over by the vice-chairman of the board; and where the vice-chairman cannot perform such functions or fails to do so, the meeting shall be convened and presided over by a director jointly elected by half and more of the directors.

Article 49 The modes of meeting and voting procedures of a board of directors shall, in addition to the provisions of this Law, be stipulated by a company's articles of association.

The board of directors shall keep minutes of the decisions that are made on the matters discussed at the meeting, and the directors present at the meeting shall sign the minutes.

The one-person one-vote system shall be practiced for voting on resolutions of the board of directors.

Article 50 A company with limited liability may have a manager, who shall be engaged or dismissed by decision of the board of directors. The manager shall be accountable to the board of directors and shall exercise the following functions and powers:

- (1) to take charge of production, operation and management of the company and organize implementation of the resolutions of the board of directors;
- (2) to organize implementation of the annual operational plan and the investment plan of the company;
- (3) to draw up plans for establishment of the internal administrative bodies of the company;
- (4) to draw up the basic management system of the company;
- (5) to formulate the specific rules of the company;
- (6) to recommend the engagement or dismissal of the deputy manager(s) and of the persons in charge of financial affairs of the company;
- (7) to decide on the engagement or dismissal of the persons in charge of management other than the ones the engagement or dismissal of whom is to be decided by the board of directors; and

(8) to exercise other functions and powers granted by the board of directors.

Where the articles of association of a company provide otherwise for the functions and powers of the manager, the provisions there shall prevail.

The manager shall attend meetings of the board of directors as a non-voting attendant.

Article 51 Where a company with limited liability has a relatively small number of shareholders and is relatively small in scale, it may have an executive director instead of a board of directors. The executive director may concurrently serve as the manager of the company.

The functions and powers of an executive director shall be stipulated by the company's articles of association.

Article 52 A company with limited liability shall have a board of supervisors, which shall be composed of not less than three members. Where a company with limited liability has a relatively small number of shareholders and is relatively small in scale, it may have one or two supervisors instead of a board of supervisors.

A board of supervisors shall be composed of representatives of the shareholders and an appropriate proportion of representatives of the staff and workers of the company, namely, not less than one-third of the number of the board of supervisors. The specific proportion shall be stipulated by the company's articles of association. The representatives of the staff and workers on the board of supervisors shall be democratically elected by the staff and workers of the company through the conference of the representatives of the staff and workers, or the general meeting of the staff and workers, or through other forms.

The board of supervisors shall have one chairman, who shall be elected by more than half of all the supervisors. The chairman of the board of supervisors shall convene and preside over the meeting of the board of supervisors; and where the chairman of the board of supervisors cannot perform such functions or fails to do so, a supervisor jointly elected by more than half of the supervisors shall convene and preside over the meeting of the board of supervisors.

Directors and senior managers shall not concurrently serve as supervisors.

Article 53 The term of office of a supervisor shall be three years. A supervisor may, if reelected upon expiration of the term of office, serve consecutive terms.

Where no election is conducted in time before the expiration of the term of office of a supervisor, or the number of the supervisors is less than the statutory number due to the resignation of a supervisor within his term of office, the existing supervisor shall, before the supervisor-elect takes office, continue to perform his duty as a supervisor in accordance with the provisions of laws, administrative regulations or the company's articles of association.

Article 54 The board of supervisors and the supervisor of a company without a board of supervisors shall exercise the following functions and powers:

(1) to examine the financial affairs of the company;

- (2) to supervise the acts of the directors and senior managers in respect of the performance of their duties assigned by the company, and put forward proposals for removal of the directors or senior managers who violate laws, administrative regulations or the company's articles of association, or the resolutions adopted by the shareholders assembly;
- (3) to demand directors or senior managers to rectify when their acts damage the interests of the company;
- (4) to propose convening an interim meeting of the shareholders assembly and to convene and preside over the meeting when the board of directors fails to perform the duty of convening and presiding over such meeting as provided for by this Law;
- (5) to put forth motions at the meeting of the shareholders assembly;
- (6) to take legal proceedings against directors or senior managers in accordance with the provisions of Article 152 of this Law; and
- (7) to exercise other functions and powers stipulated by the company's articles of association.

Article 55 A supervisor may attend meetings of the board of directors as a non-voting participant, and may inquire about or put forth proposals on matters on which resolutions have been or are to be adopted by the board of directors.

When the board of supervisors or the supervisor of a company without a board of supervisors discovers something unusual in the operation of the company, it/he may conduct investigation into the operating situation; and when necessary, it/he may engage an accounting firm or other such services to assist in the work, and the expenses entailed shall be paid by the company.

Article 56 A board of supervisors shall convene at least one meeting in each year. Supervisors may propose convening an interim meeting of the board of supervisors.

The mode of the meeting shall, in addition to the provisions of this Law, be stipulated by the company's articles of association.

Resolutions of the board of supervisors shall be subject to adoption by half and more of the supervisors.

The board of supervisors shall keep minutes of the decisions made on matters discussed at a meeting, and the supervisors present at the meeting shall sign the minutes.

Article 57 The expenses needed to exercise the functions and powers by the board of supervisors or the supervisor of a company without such a board shall be paid by the company.

### Section 3 Special Provisions on One-person Companies with Limited Liability

Article 58 The provisions of this Section are applicable to the incorporation and the organizational structure of a one-person company with limited liability; and where no provisions are stipulated in this Section on such company, the provisions of Sections 1 and 2 of this Chapter shall be applicable.

For the purposes of this Law, the one-person company with limited liability means a company with limited liability where there is only one shareholder who is a natural person or a legal person.

Article 59 The minimum amount of the registered capital for a one-person company with limited liability is 100,000 yuan. The shareholder shall make the capital contributions in one lump sum as stipulated by the articles of association of the company.

A natural person may only make investment for the incorporation of one one-person company with limited liability. Such a company may not make investment for the incorporation of a new one-person company with limited liability.

Article 60 A one-person company with limited liability shall clearly indicate whether it is of the sole investment of a natural person or of a legal person in its registration, and shall have it stated clearly as such in its business license.

Article 61 The articles of association of a one-person company with limited liability shall be formulated by the shareholder.

Article 62 No shareholders assembly shall be set up in a one-person company with limited liability. When the shareholder makes a decision on the matters specified in the first paragraph of Article 38 of this Law, he shall do so in written form and sign it before keeping it for the record in the company.

Article 63 A one-person company with limited liability shall, at the end of each fiscal year, draw up its financial and accounting report and have it audited by an accounting firm.

Article 64 Where the shareholder of a one-person company with limited liability cannot prove that the property of the company is independent of his own property, he shall assume the joint and several liability for the debts of the company.

#### Section 4 Special Provisions on Wholly Stated-owned Companies

Article 65 The provisions of this Section shall be applicable to the incorporation and the organizational structure of wholly Stated-owned companies; and where no provisions are stipulated on such company in this Section, the provisions of Sections 1 and 2 of this Chapter shall be applicable.

For the purposes of this law, a wholly Stated-owned companies is one with limited liability which is solely invested in by the State and for which the State Council or the local people's government authorizes the State-owned assets regulatory institution under the people's government at the corresponding level to perform the duties of an investor.

Article 66 The articles of association of a wholly Stated-owned company shall be formulated by the State-owned assets regulatory institution, or shall be formulated by its board of directors and submitted to the said institution for approval.

Article 67 No shareholders assembly shall be set up in a wholly Stated-owned company, and the functions and powers of such board shall be exercised by the State-owned assets regulatory institution. The said institution may authorize the company's board of directors to exercise part of

the functions and powers of the shareholders assembly and to make decisions on important matters of the company; however, matters on the merger, division and dissolution of the company, on the increase and reduction of the registered capital and the issue of corporate bonds shall be subject to decision by the State-owned assets regulatory institution; and among such matters, the merger, division, dissolution and application for bankruptcy of important wholly Stated-owned companies shall, after examination and verification by the said institution, be submitted to the people's government at the corresponding level for approval.

The important wholly Stated-owned companies mentioned in the preceding paragraph shall be defined in accordance with the regulations of the State Council.

Article 68 A wholly Stated-owned company shall have a board of directors, which shall exercise its functions and powers in accordance with the provisions of Articles 47 and 67 of this Law. The term of office of a director shall not exceed three years. On the board of directors, there shall be representatives of the staff and workers of the company.

The members of the board of directors shall be appointed by the State-owned assets regulatory institution; but the representatives of the staff and workers among such members shall be elected by the conference of the representatives of the staff and workers of the company.

The board of directors shall have one chairman and may have a vice-chairman. The chairman and vice-chairman shall be designated by the State-owned assets regulatory institution from among the members of the board of directors.

Article 69 A wholly Stated-owned company shall have a manager, who shall be engaged or dismissed by the board of directors. The manager shall exercise his functions and powers in accordance with the provisions of Article 50 of this Law.

Upon consent of the State-owned assets regulatory institution, a member of the board of directors may concurrently serve as manager.

Article 70 Without the consent of the State-owned assets regulatory institution, the chairman or vice-chairman of the board of directors or the director or senior manager of a wholly Stated-owned company shall not hold a post concurrently in another company with limited liability, company limited by shares or economic organization.

Article 71 There shall be not less than five persons on the board of supervisors of a wholly State-owned company, and among them, the proportion of the representatives of the staff and workers shall not be less than one-third. The specific proportion shall be stipulated by the company's articles of association.

The members of a board of supervisors shall be appointed by the State-owned assets regulatory institution; but the representatives of the staff and workers among the members on the board of supervisors shall be elected by the conference of the representatives of the staff and workers of the company. The chairman of the board of supervisors shall be designated by the State-owned assets regulatory institution from among the members on the board of supervisors.



The board of supervisors shall exercise the functions and powers stipulated by Subparagraphs (1), (2) and (3) in Article 54 of this Law and the other functions and powers prescribed by the State Council.

### Chapter III Equity Transfer of Companies with Limited Liability

Article 72 Shareholders of a company with limited liability may mutually transfer all or a part of their equity to each other.

Where a shareholder intends to transfer his equity to a person other than a shareholder, the matter shall be subject to consent by more than half of the other shareholders. The shareholder shall inform, in writing, the other shareholders of his intention to transfer his equity in order to seek their consent. Where the other shareholders give no reply at the expiration of 30 days from the date they receive the written information, it shall be regarded as their consent to the transfer. Where half or more of the other shareholders do not give their consent to the transfer, they shall buy such equity; and the ones who do not do so shall be deemed as giving their consent to the transfer.

With regard to the equity the transfer of which is consented to by the shareholders, all the other shareholders shall have the right of first refusal under equal conditions. Where two or more shareholders claim to exercise the right of first refusal, they shall determine, through consultation, the proportions of the equity to be purchased by them respectively; and where consultation fails, they shall exercise the right of first refusal on the basis of the proportions of their respective capital contributions at the time when the equity is transferred.

Where the articles of association of a company stipulate otherwise on equity transfer, such stipulations shall prevail.

Article 73 When a people's court transfers the equity of a shareholder in accordance with the procedures of compulsory execution as provided for by law, it shall notify the company and all the shareholders of the matter, and notify that the other shareholders shall have the right of first refusal under equal conditions. When at the expiration of 20 days from the date the other shareholders receive the notification from the people's court, they have not exercised their right of first refusal, they shall be regarded as waiving such right.

Article 74 After the transfer of the equity in accordance with the provisions of Articles 72 and 73 of this Law, the company shall cancel the investment certificate of the original shareholder and issue an investment certificate to the new shareholder, and shall accordingly revise the records regarding the shareholders and their capital contributions in the company's articles of association and in the roster of the shareholders. Such revisions made in the company's articles of association need not be voted by the shareholders assembly.

Article 75 Under one of the following circumstances, where a shareholder votes against the resolution adopted by the shareholders assembly, he may request the company to purchase his equity at a reasonable price:

- (1) The company fails to distribute its profits to the shareholders for five consecutive years, when it has been making profits for five years running and meets the conditions for distributing profits as is provided for by this Law;
- (2) The company is to be merged or divided, or the principal part of its property is to be transferred; or
- (3) When the period of business stipulated by the company's articles of association expires or other situations originating the dissolution stipulated by the said articles of association arise, a resolution is adopted by the shareholders assembly to revise the articles of association for continued existence of the company.

Where a shareholder fails to reach an agreement on the equity purchase with the company within 60 days from the date the resolution is adopted by the shareholders assembly, he may bring a suit before a people's court within 90 days from the date the resolution is adopted by the shareholders assembly.

Article 76 After the death of a shareholder, who is a natural person, his legal heir may inherit his qualification, except where otherwise provided for by the company's articles of association.

## Chapter IV Incorporation and Organizational Structure of a Company Limited by Shares

### Section 1 Incorporation

Article 77 The following conditions shall be met if a company limited by shares is to be incorporated:

- (1) The number of promoters conforms to the statutory number;
- (2) The share capital subscribed for and raised by promoters reaches the statutory minimum amount of capital;
- (3) The issue of shares and the preparations made for incorporation conform to the provisions of law;
- (4) The company's articles of association are formulated by the promoters, and such articles of association of a company incorporated by means of share offer are adopted at the inaugural meeting;
- (5) The company has its name, and its organizational structure conforms to the requirements for a company limited by shares; and

(6) The company has its domicile.

Article 78 A company limited by shares may be incorporated by means of promotion or by means of share offer.

A company incorporated by means of promotion is one incorporated by the promoters subscribing for all the shares to be issued by the company.

A company incorporated by means of share offer is one incorporated by the promoters subscribing for a portion of the shares to be issued by the company, with the rest offered to the general public or to specific quarters.

Article 79 To incorporate a company limited by shares, there shall be not less than 2 but not more than 200 promoters, more than half of whom shall have their domiciles within the territory of the People's Republic of China.

Article 80 The promoters of a company limited by shares shall undertake the matters concerning the preparation for incorporation of the company.

The promoters shall sign a promoters' agreement, in which to define their respective rights and obligations in the process of the incorporation of the company.

Article 81 Where a company limited by shares is incorporated by means of promotion, its registered capital shall be the total amount of the share capital subscribed for by all the promoters, as is registered with the company registration authority. The initial capital subscriptions by all the promoters of the company shall be not less than 20 percent of the registered capital and the remainder shall be paid in full by the promoters within two years from the date the company is incorporated; in the case of an investment company, it may do so within five years. Before the money is furnished in full, the company shall not offer shares to others.

Where a company limited by shares is incorporated by means of share offer, its registered capital shall be the total amount of the actually received share capital as is registered with the company registration authority.

The minimum amount of the registered capital of a company limited by shares shall be 5,000,000 yuan. Where the minimum amount of the registered capital of a company limited by shares is greater than the said amount, as is stipulated by laws or administrative regulations, the provisions there shall prevail.

Article 82 The articles of association of a company limited by shares shall specify the following items:

- (1) the name and domicile of the company;
- (2) the scope of business of the company;
- (3) the means of incorporation of the company;

- (4) the total number of shares, the par value for each share and the registered capital of the company;
- (5) the names or titles of the promoters, the number of shares subscribed for by them, or the forms and dates of their contributions;
- (6) the composition, functions and powers of the board of directors and its rules of procedure;
- (7) the legal representative of the company;
- (8) the composition, functions and powers of the board of supervisors and its rules of procedure;
- (9) methods for distribution of the company's profits;
- (10) the reasons for dissolution of the company and its liquidation methods;
- (11) methods for notices and announcements of the company; and
- (12) other items that the shareholders general assembly deems necessary to be specified.

Article 83 The provisions of Article 27 of this Law shall be applicable to the forms of contributions made by the promoters.

Article 84 Where a company limited by shares is incorporated by means of promotion, each of the promoters shall, in writing, subscribe for the full portion of the shares to be subscribed for by him as stipulated by the company's articles of association; if a promoter offers to pay the subscriptions in a lump sum, he shall do so immediately; and if a promoter offers to pay the subscriptions by installments, he shall immediately pay for the first installment. Where a promoter invests with non-currency property, he shall go through the formalities for the transfer of his property rights according to law.

Where a promoter fails to pay the subscriptions in accordance with the provisions of the preceding paragraph, he shall be liable for the default in accordance with the promoters' agreement.

After the initial payment of the subscriptions by the promoters, the board of directors and the board of supervisors shall be elected. The board of directors shall submit to the company registration authority the company's articles of association, the capital verification certificate issued by the capital verification authority, which is set up according to law, and the other documents specified by laws or administrative regulations, in order to apply for registration of the incorporation of the company.

Article 85 Where a company limited by shares is incorporated by means of share offer, the shares subscribed for by the promoters shall be not less than 35 percent of the total number of the shares issued by the company; where laws or administrative regulations provide otherwise, the provisions there shall prevail.

Article 86 Where shares are to be offered to the general public, the promoters shall publish the prospectus of the company, and prepare subscription forms. In a subscription form shall clearly be stated the items specified by Article 87 of this Law, and the subscriber shall fill in the number of

the shares subscribed for, the amount of money involved and his domicile, and shall sign and seal the form. The subscriber shall pay money for the number of the shares he subscribes for.

Article 87 The company's articles of association formulated by the promoters shall be attached to a prospectus, in which the following items shall clearly be stated: (1) the number of shares subscribed for by the promoters;

(2) the par value and the issue price of each share;

(3) the total number of bearer shares issued;

(4) the purpose of the funds to be raised;

(5) the rights and obligations of the subscribers; and

(6) the dates of start and end for the share offer and a statement to the effect that subscribers may withdraw their share subscriptions when the shares are not fully subscribed for at the expiration of the time limit.

Article 88 Where promoters offer shares to the general public, the shares shall be underwritten by the securities company established according to law, and an underwriting agreement shall be concluded.

Article 89 Where promoters offer shares to the general public, they shall enter into an agreement with a bank on the collection of subscription moneys on their behalf.

The bank entrusted with collecting the subscription moneys shall, in accordance with the agreement, collect and keep the said moneys, issue receipts to the subscribers for their payments, and bear the obligation to issue certificates of receipt of moneys to relevant departments.

Article 90 After payment in full of the subscription moneys for the shares issued, such moneys shall be subject to verification by the capital verification authority established according to law, which shall produce a capital verification certificate. The promoters shall, within 30 days from the date the subscription moneys are paid in full, convene and preside over an inauguration assembly. An inauguration assembly shall be composed of all the promoters and subscribers.

Where the shares issued are not fully subscribed for at the date of expiration as specified in the prospectus, or the promoters fail to convene an inaugural meeting within 30 days from the date the subscription moneys for the shares issued are paid in full, the subscribers may claim refund from the promoters of their subscription moneys paid for the shares, plus their bank deposit interest calculated for the same period.

Article 91 The promoters shall notify each subscriber of the date of the inauguration assembly or make an announcement of such meeting 15 days prior to its convention. The inauguration assembly shall be convened only if the promoters and subscribers representing more than half of the total shares issued are present.

An inauguration assembly shall exercise the following functions and powers:

- (1) to examine the promoters' report on the preparations for the incorporation of the company;
- (2) to adopt the articles of association of the company;
- (3) to elect members of the board of directors;
- (4) to elect the members of the board of supervisors;
- (5) to examine and verify the expenses incurred for the incorporation of the company;
- (6) to examine and verify the evaluation of the property used by the promoters to pay subscription moneys; and
- (7) to adopt a resolution against the incorporation of the company in the event that a force majeure occurs or a major change takes place in the operational conditions, which directly affects the incorporation of the company.

A resolution adopted at the inaugural meeting on the items specified in the preceding paragraph shall be subject to adoption by the subscribers attending the meeting who have more than half of the voting rights.

Article 92 After payment of their subscription moneys or making their capital contributions as substitutes for their share subscriptions, the promoters and subscribers shall not withdraw their share capital except where the shares issued are not fully subscribed for within the time limit, or the promoters fail to convene an inaugural meeting on schedule, or a resolution against the incorporation of the company is adopted at the inaugural meeting.

Article 93 The board of directors shall, within 30 days from the date the inaugural meeting is closed, submit the following documents to the company registration authority to apply for registration of the incorporation of the company:

- (1) the written application for registration of the company;
- (2) the minutes of the inaugural meeting;
- (3) the articles of association of the company;
- (4) the capital verification certificate;
- (5) the appointment documents and identification certificates of the legal representative, directors and supervisors;
- (6) the qualification certificate of the promoter as a legal person or his identification certificate as a natural person; and
- (7) the certificate of the domicile of the company.

In the case of a company limited by shares incorporated by means of share offer which publicly issues its shares, it shall, in addition, submit to the company registration authority the approval document issued by the securities regulatory authority under the State Council.

Article 94 Where after the incorporation of a company limited by shares, a promoter fails to pay in full the subscription moneys in accordance with the provisions of the company's articles of association, he shall pay them in full; and the other promoters shall bear joint and several liability.

Where after the incorporation of a company limited by shares, it is discovered that the actual evaluation of the non-currency property used as capital contributions for the incorporation of the company is obviously less than the evaluation prescribed by the company's articles of association, the promoters making such contributions shall make up the difference; and the other promoters shall bear joint and several liability.

Article 95 The promoters of a company limited by shares shall bear the following liabilities:

- (1) Where the company cannot be incorporated, they shall bear the joint and several liability for all the debts and expenses incurred in the act of incorporation;
- (2) Where the company cannot be incorporated, they shall bear the joint and several liability for refunding the subscription moneys paid by the subscribers, plus their bank deposit interest calculated for the same period of time; and
- (3) Where the interests of the company are impaired due to the fault committed by the promoters in the process of the incorporation of the company, they shall bear the liability to pay compensation to the company.

Article 96 Where a company with limited liability is converted into a company limited by shares, the total amount of the actually received share capital to be converted shall not be greater than the amount of its net assets. Where a company with limited liability that is converted into a company limited by shares publicly issues shares for the purpose of increasing its capital, it shall do so according to law.

Article 97 A company limited by shares shall have its articles of association, the roster of the shareholders, the stubs of corporate bonds, the minutes of the meetings of the shareholders general assembly, the minutes of the meetings of the board of directors and of the board of supervisors, and the financial and accounting reports kept at the company.

Article 98 Shareholders shall have the right to consult the company's articles of association, the roster of the shareholders, the stubs of corporate bonds, the minutes of the meetings of the shareholders general assembly, the resolutions adopted at the meetings of the board of directors and of the board of supervisors, and the financial and accounting reports, and shall have the right to put forward proposals on or to make inquiries about the business operation of the company.

## Section 2 Shareholders General Assembly

Article 99 The shareholders general assembly of a company limited by shares shall be composed of all the shareholders. The shareholders general assembly is the organ of power of the company and shall exercise its functions and powers according to this Law.

Article 100 The provisions of the first paragraph of Article 38 of this Law on the functions and powers of the shareholders assembly of a company with limited liability shall be applicable to the shareholders assembly of a company limited by shares.

Article 101 The annual meeting of the shareholders general assembly shall be convened once a year. An interim meeting shareholders general assembly shall be convened within two months where one of the following situations occurs:

- (1) When the number of directors is less than the number prescribed by this Law, or less than two-thirds of the number required by the company's articles of association;
- (2) When the amount of the losses that the company has left unrecouped reaches one-third of the total share capital actually received;
- (3) When a shareholder individually holding, or the shareholders together holding, more than 10 percent of the company's shares request(s) to convene such a meeting;
- (4) When the board of directors deems it necessary;
- (5) When the board of supervisors proposes to convene such a meeting; or
- (6) When other situations stipulated by the company's articles of association occur.

Article 102 A meeting of the shareholders general assembly shall be convened by the board of directors and presided over by the chairman of the board; where the chairman cannot perform the function or fails to do so, the vice-chairman shall preside over such a meeting; and where the vice-chairman cannot perform the function or fails to do so, a director jointly elected by more than half of the directors shall preside over it.

Where the board of directors cannot perform or fails to perform the duty of convening a meeting of the shareholders general assembly, the board of supervisors shall, in time, convene and preside over such a meeting; and where the board of supervisors fails to convene and preside over the meeting, the shareholder individually holding, or the shareholders together holding, more than 10 percent of the company's shares for 90 or more consecutive days may convene and preside over the meeting of his or their own accord.

Article 103 Where a meeting of the shareholders general assembly is to be convened, the shareholders shall, 20 days prior to the convening of such a meeting, be notified of the time and place of the meeting to be convened and of the matters to be deliberated at the meeting; where an interim meeting of the shareholders general assembly is to be convened, the shareholders shall be notified of it 15 days prior to the convening of the meeting; and where bearer shares are to be issued, an announcement of the time and place of the meeting to be convened and the matters to be deliberated at the meeting shall be made 30 days prior to its convention.

A shareholder individually holding, or the shareholders together holding, more than three percent of the shares of the company may make provisional proposals and submit them in writing to the board of directors 10 days prior to the convening of the meeting of the shareholders general assembly; and the board of directors shall notify the other shareholders of such proposals within



two days from the date it receives the proposals and shall submit them to the shareholders general assembly for deliberation. The content of the provisional proposals shall be kept within the scope of the functions and powers of the shareholders general assembly, and the proposals shall contain explicit subjects for discussion and specific matters for resolution.

No resolutions on matters not clearly stated in the notifications mentioned in the preceding two paragraphs shall be adopted at a meeting of the shareholders general assembly.

Where holders of bearer shares intend to attend a meeting of the shareholders general assembly, they shall deposit their share certificates with the company for a period beginning from five days prior to the convening of the meeting to the end of the meeting.

Article 104 Shareholders attending a meeting of the shareholders general assembly shall have the right to one vote for each share held, but the company itself shall have no right to vote for the shares held.

A resolution to be made by the shareholders general assembly shall be subject to adoption by more than half of the voting rights held by the shareholders present at the meeting. But resolutions to be made by the shareholders general assembly on revision of the company's articles of association, on increase or reduction of the registered capital, on merger, division, dissolution or transformation of the company shall be subject to adoption by more than two-thirds of the voting rights held by the shareholders present at the meeting.

Article 105 With regard to such matters as transfer and assignment of major assets of a company and provision of guarantee for another entity which are subject to resolution by the shareholders general assembly, as prescribed by this Law and the company's articles of association, the board of directors shall, in a timely manner, convene a meeting of the shareholders general assembly, at which to hold a vote on the matters mentioned above.

Article 106 For election of directors or supervisors by the shareholders general assembly, the system of cumulative voting may be practiced in accordance with the provisions of the company's articles of association or the resolution adopted by the shareholders general assembly.

For the purposes of this Law, the system of cumulative voting means that for election of directors or supervisors by the shareholders general assembly, the number of voting rights allocated to each share is equal to the number of directors or supervisors to be elected and such voting rights held by the shareholders may be pooled.

Article 107 A shareholder may entrust a proxy to attend a meeting of the shareholders general assembly. The proxy shall present the shareholder's power of attorney to the company, and shall exercise the voting rights within the scope of authorization.

Article 108 Decisions on matters discussed at a meeting of the shareholders general assembly shall be minuted down, and the chairperson and the directors present at the meeting shall sign the minutes. The minutes of the meeting shall be kept together with the roster of the signatures of the shareholders attending the meeting and the powers of attorney of the proxies attending the meeting.

### Section 3 Board of Directors, and the Manager

Article 109 A company limited by shares shall have a board of directors composed of 5 to 19 members.

The board of directors may, among the members, have representatives from among the staff and workers of the company. Such representatives on a board of directors shall be democratically elected by the staff and workers of the company through the conference of the representatives of the staff and workers, the general meeting of the staff and workers, or through other forms.

The provisions in Article 46 of this Law on the term of office of a director of a company with limited liability shall be applicable to the director of a company limited by shares.

The provisions in Article 47 of this Law on the functions and powers of the board of directors of a company with limited liability shall be applicable to the board of directors of a company limited by shares.

Article 110 A board of directors shall have one chairman and may have a vice-chairman. The chairman and vice-chairman of the board of directors shall be elected by more than half of all the directors.

The chairman of the board of directors shall convene and preside over the meetings of the board, and shall inspect the implementation of the resolutions adopted by the board of directors. The vice-chairman of the board of directors shall assist the chairman in his work. Where the chairman cannot perform the functions or fails to do so, the vice-chairman shall perform the functions; and where the vice-chairman cannot perform the functions or fails to do so, a director jointly elected by more than half of the directors shall perform the functions.

Article 111 The meeting of the board of directors shall be convened at least twice a year. All the directors and supervisors shall be notified of such a meeting 10 days prior to its convention.

Shareholders representing more than one-tenth of the voting rights, more than one-third of the directors, or the board of supervisors may propose to convene an interim meeting of the board of directors. The chairman of the board shall convene and preside over such a meeting within 10 days from the date he receives the proposal.

The form of notification and the time limit for notification in respect of the convening of an interim meeting of the board of directors may be separately prescribed.

Article 112 A meeting of the board of directors shall be held only if more than half of all the directors are present. Any of the resolutions made by the board shall be subject to adoption by more than half of all the directors.

The one-person one-vote system shall be practiced when resolutions of the board of directors are put to the vote.

Article 113 Meetings of the board of directors shall be attended by the directors in person. If a director cannot attend a meeting of the board for one reason or another, he may, in writing, entrust

another director with attending the meeting on his behalf, and in the power of attorney shall clearly indicate the scope of authorization.

Decisions on matters discussed at a meeting of the board of directors shall be minuted down, and the minutes of the meeting shall be signed by the directors present.

Directors shall be liable for the resolutions adopted by the board of directors. Where a resolution of the board violates laws, administrative regulations, or the company's articles of association, or the resolutions of the shareholders general assembly, and thus causes serious losses to the company, the directors participating in the adoption of such a resolution shall be liable for compensation to the company. However, where a director is proved to have expressed his objection to such a resolution when it was put to the vote and his objection was recorded in the minutes of the meeting, he may be exempted from such liability.

Article 114 A company limited by shares shall have a manager, who shall be engaged or dismissed by decision of the board of directors.

The provisions in Article 50 of this Law on the functions and powers of the manager of a company with limited liability shall be applicable to the manager of a company limited by shares.

Article 115 The board of directors may decide that one of its members shall concurrently serve as the manager of the company.

Article 116 A company shall not provide loans, directly or through its subsidiary, to its directors, supervisors or senior managers.

Article 117 A company shall regularly disclose to its shareholders information about the remunerations obtained by the directors, supervisors and senior managers from the company.

#### Section 4 Board of supervisors

Article 118 A company limited by shares shall have a board of supervisors, which shall be composed of not less than three members.

A board of supervisors shall include representatives of shareholders, and representatives of the staff and workers of the company in an appropriate proportion, which shall be not less than one-third of the total number of members on the board of supervisors. The specific proportion shall be prescribed by the company's articles of association. The representatives of the staff and workers on the board of supervisors shall be democratically elected by the staff and workers of the company through the conference of the representatives of the staff and workers, or the general meeting of the staff and workers, or through other forms.

The board of supervisors shall have one chairman and may have one vice-chairman. Both shall be elected by more than half of all the supervisors. The chairman of the board of supervisors shall convene and preside over the meeting of the board; where the chairman of the board of supervisors cannot perform the functions or fails to do so, the vice-chairman shall convene and preside over the meeting of the board; and where the vice-chairman cannot perform the functions

or fails to do so, a supervisor jointly elected by half or more of the supervisors shall convene and preside over the meeting of the board.

A director or senior manager shall not concurrently serve as supervisor.

The provisions in Article 53 of this Law on the term of office of a supervisor of a company with limited liability shall be applicable to the supervisor of a company limited by shares.

Article 119 The provisions in Articles 54 and 55 of this Law on the functions and powers of the board of supervisors of a company with limited liability shall be applicable to the board of supervisors of a company limited by shares.

The expenses necessary for the exercise of the functions and powers of the board of supervisors shall be borne by the company.

Article 120 The board of supervisors shall convene a meeting at least once every six months. Supervisors may propose to convene an interim meeting of the board of supervisors.

The mode of the meeting and the voting procedure of the board of supervisors shall, in addition to the provisions of this Law, be stipulated by the company's articles of association.

A resolution made by the board of supervisors shall be subject to adoption by more than half of the supervisors.

Decisions on matters discussed at a meeting of the board of supervisors shall be minuted down, and the minutes of the meeting shall be signed by all the supervisors present.

#### Section 5 Special Provisions on Organizational Structure of Listed Companies

Article 121 For the purposes of this Law, a listed company means a company limited by shares which has its shares listed and traded at stock exchanges.

Article 122 Where a listed company purchases or sells major assets within one year, or the amount of guarantee exceeds 30 percent of its total assets, the matter shall be subject to resolution by the shareholders general assembly, which shall be subject to adoption by the shareholders present who hold two-thirds or more of the voting rights.

Article 123 A listed company shall have independent directors. The specific measures in this regard shall be formulated by the State Council.

Article 124 A listed company shall have a secretary of the board of directors, who shall be in charge of such matters as preparation for the meetings of the shareholders general assembly and of the board of directors of the company, safekeeping of documents, management of data on the company's shareholders and disclosure of information.

Article 125 Where the director of a listed company is affiliated with an enterprise that is involved in the matters on which a resolution is to be made at a meeting of the board of directors, he shall not exercise his voting right on such resolution, nor shall he exercise the voting right on behalf of another director. Such a meeting of the board of directors may be held with the attendance of more

than half of the directors who are not affiliated with the enterprise, and the resolution made at the meeting of the board shall be subject to adoption by more than half of the unaffiliated directors. Where the number of unaffiliated directors present at the meeting of the board is less than three persons, the matters shall be submitted to the shareholders general assembly of the listed company for deliberation.

## Chapter V Issue and Transfer of Shares of Companies Limited by Shares

### Section 1 Issue of Shares

Article 126 The capital of a company limited by shares shall be divided into shares of equal value.

The shares of the company shall take the form of share certificates, which are vouchers issued by the company to certify the shares held by its shareholders.

Article 127 The shares shall be issued in compliance with the principles of fairness and impartiality. The shares of the same class must carry the same rights.

Shares of the same class issued at the same time shall be issued on the same conditions and at the same price. All units and individuals shall pay the same price for each of the share they subscribe for.

Article 128 Shares may be issued at or above their par value, but shall not be issued below their par value.

Article 129 Share certificates may be in paper form or in other forms as prescribed by the securities regulatory authority under the State Council.

The following main items shall clearly be indicated on a share certificate:

- (1) the name of the company;
- (2) the date of the company's incorporation;
- (3) the class of the shares, the par value and the number of shares represented by the certificate; and
- (4) the serial number of the share certificate.

A share certificate shall be signed by the legal representative and sealed by the company.

The words promoter's share certificate shall clearly be indicated on the share certificates issued to promoters.

Article 130 Shares issued by a company may be either registered shares or bearer shares.

Shares issued by a company to promoters and legal persons shall be registered shares, on which shall be indicated the titles or names of the promoters or legal persons. Such shares shall not be registered in other names or names of their representatives.

Article 131 Where registered shares are issued, the company shall prepare a roster of the shareholders, in which the following items shall be recorded:

- (1) the titles or names, and domiciles of the shareholders;
- (2) the number of shares held by each shareholder;
- (3) the serial numbers of the share certificates held by each shareholder; and
- (4) the date on which each shareholder obtains his shares.

Where bearer shares are issued, the company shall keep a record of the number, the serial numbers and the issue date of the share certificates.

Article 132 The State Council may formulate separate regulations on the shares of other classes issued by companies, which are not provided for in this Law.

Article 133 A company limited by shares shall formally deliver its share certificates to the shareholders immediately after its incorporation. The company shall not deliver its share certificates to the shareholders prior to its incorporation.

Article 134 Where a company issues new shares, a resolution on the following matters shall be adopted by the shareholders general assembly:

- (1) the class and number of the new shares;
- (2) the issue price of the new shares;
- (3) the opening and closing dates for the issue of the new shares; and
- (4) the class and number of the new shares issued to the existing shareholders.

Article 135 When a company publicly issues new shares upon verification and approval by the securities regulatory authority under the State Council, it shall announce its prospectus on the new share offer and its financial reports, and shall prepare subscription application forms.

The provisions of Articles 88 and 89 of this Law shall be applicable to the issue of new shares by a company to the public.

Article 136 Where a company issues new shares, it may, on the basis of its operational and financial conditions, decide on a proposal on the price of the new shares.

Article 137 Where the new shares issued by a company are fully subscribed for, the company shall apply to the company registration authority for the registration of modification in its capital and shall make an announcement thereafter.

## Section 2 Transfer of Shares

Article 138 Shares held by shareholders may be transferred in accordance with law.

Article 139 Shareholders shall transfer their shares through stock exchanges established in accordance with law or through other forms prescribed by the State Council.

Article 140 Registered shares shall be transferred by means of endorsement by shareholders or by such other means as provided for by laws or administrative regulations; and after such transfer, the company shall register the names or titles and domiciles of the transferees in its roster of shareholders.

No registration of modification to the roster of shareholders as stipulated by the preceding paragraph shall be made within the period of 20 days prior to the convening of a meeting of the shareholders general assembly or within the period of 5 days prior to the date of record on which the company decides to distribute dividends. However, where laws provide otherwise in respect of registration of modification made to the roster of the shareholders of listed companies, the provisions there shall prevail.

Article 141 Transfer of bearer shares shall become effective immediately after a shareholder delivers such share certificates to a transferee.

Article 142 Shares held by the promoters of a company shall not be transferred within one year from the date the company is incorporated. Shares issued prior to the public issue by a company shall not be transferred within one year from the date the shares of the company are listed and traded at stock exchanges.

Directors, supervisors and senior managers of a company shall declare to the company the numbers of the company's shares held by them and the changes of the shares they hold, and the number of the company's shares annually transferred by each of them during their term of office shall not exceed 25 percent of the total number of the company's shares held by them respectively; and the company's shares held by them shall not be transferred within one year from the date the shares of the company are listed and traded. The company's shares held by the persons mentioned above shall not be transferred within six months after they leave office. The company's articles of association may stipulate other restrictive provisions on the transfer of the company's shares held by the directors, supervisors and senior managers of the company.

Article 143 A company shall not purchase its own shares, except where:

- (1) It reduces its registered capital;
- (2) It merges with another company that holds its shares;
- (3) It rewards the staff and workers of the company with its shares; or
- (4) A shareholder requests the company to purchase his shares because he holds objections to the resolution on the merger or division of the company adopted by the shareholders general assembly.

Purchase of its own shares by a company due to the reasons specified in Subparagraph (1), (2) or (3) of the preceding paragraph shall be subject to resolution adopted by the shareholders general

assembly. Where a company purchases its own shares on grounds of Subparagraph (1) as specified in the preceding paragraph, such shares shall be cancelled within 10 days from the date it purchases them; and where the shares are purchased on grounds of Subparagraph (2) or (4), such shares shall be transferred or cancelled within six months.

The number of its own shares purchased by a company in accordance with the provisions of Subparagraph (3) of the first paragraph shall not exceed five percent of the total number of the shares issued by the company; the funds used for such purchase shall be allotted from the after-tax profits of the company; and the shares purchased shall be transferred to its staff and workers within one year.

A company shall not accept its own shares as the subject matter of a mortgage.

Article 144 Where registered share certificates are stolen, lost or destroyed, the shareholder may, in accordance with the procedure for public notice for assertion of claims provided for in the Civil Procedure Law of the People's Republic of China, request a people's court to declare such share certificates void. After the people's court has declared the said share certificates void, the shareholder may apply to the company for replacement of such share certificates.

Article 145 A listed company shall have its shares listed and traded in accordance with relevant laws, administrative regulations and the rules of stock exchanges governing transactions.

Article 146 A listed company shall, in accordance with the provisions of laws and administrative regulations, disclose its financial and business situations and its major litigations, and shall publicize its financial reports every six months of each fiscal year.

## Chapter VI Qualifications and Obligations of Directors, Supervisors and Senior Managers of Companies

Article 147 None of the following persons shall serve as a director, supervisor, or senior manager of a company:

- (1) a person who has no or limited capacity for civil conduct;
- (2) a person who was sentenced to criminal punishment for embezzlement, bribery, seizure of property or misappropriation of property or for sabotage of the socialist market economic order, where less than five years have elapsed after the expiration of the period of execution; or a person who was deprived of his political rights for the commission of a crime, where less than five years have elapsed after the expiration of the period of execution;
- (3) a person who, being a director or the head or manager of a company or enterprise that went into bankruptcy and liquidation, was personally liable for the bankruptcy of the said company or enterprise, where less than three years have elapsed from the date liquidation of the company or enterprise is completed;



(4) a person who, being the legal representative of a company or an enterprise, the business license of which was revoked for violation of law and which was ordered to close down, was personally liable for the above, where less than three years have elapsed from the date the business license of the company or enterprise is revoked; or

(5) a person who fails to liquidate a relatively large amount of personal debts when they are due.

Where a company elects or appoints its directors or supervisors, or engages its senior managers in violation of the provisions of the preceding paragraph, such election, appointment or engagement shall be invalid.

Where, during his term of office, a director, supervisor or senior manager is found to be a person as specified in the first paragraph of this Article, the company shall remove him from office.

Article 148 Directors, supervisors and senior managers of a company shall observe laws, administrative regulations and the company's articles of association and shall assume the duties of loyalty and diligence to the company.

Directors, supervisors and senior managers of a company shall not take advantage of their functions and powers to accept bribes or collect other illicit earnings, and shall not take illegal possession of the property of the company.

Article 149 A director or senior manager shall not commit the following acts:

(1) misappropriating the funds of the company;

(2) opening an account in his own name or in the name of another person to deposit the funds of the company;

(3) in violation of the stipulations of the company's articles of association or without the consent of the shareholders assembly, the shareholders general assembly or the board of directors, loaning the funds of the company to another person or using the property of the company to provide guarantee for another person;

(4) in violation of the stipulations of the company's articles of association or without the consent of the shareholders assembly or the shareholders general assembly, entering into a contract or conducting transactions with the company;

(5) without the consent of the shareholders assembly or the shareholders general assembly, taking advantage of his position to seek commercial opportunities, which belong to the company, for himself or for another person, or operating for himself or for another person the same kind of business as that of the company where he is holding a post;

(6) taking into his own possession the commissions from transactions conducted by another person with the company;

(7) disclosing secrets of the company without authorization; or

(8) other acts committed in violation of the duty of loyalty to the company.

All earnings derived by the directors or senior managers in violation of the provisions in the preceding paragraph shall be returned to the company.

Article 150 Where a director, supervisor or senior manager violates laws, administrative regulations or the company's articles of association in performance of his duties for the company, and thus causes losses to the company, he shall be liable for compensation.

Article 151 Where the shareholders assembly or the shareholders general assembly requests directors, supervisors or senior managers to be present at its meeting, the latter shall attend the meeting as non-voting participants and subject themselves to inquiries by the shareholders.

Directors or senior managers shall truthfully provide relevant information and data to the board of supervisors or the supervisors of a company with limited liability where there is no such board of supervisors, and shall not hinder the exercise of the functions and powers by the board of supervisors or the supervisors.

Article 152 Where a director or senior manager causes losses to the company, as specified in Article 150 of this Law, the shareholders of a company with limited liability, or the shareholders of a company limited by shares individually or jointly holding one percent or more of its shares for 180 or more consecutive days may request, in writing, the board of supervisors or the supervisors of the company with limited liability where there is no such board to bring a lawsuit to a people's court; and where a supervisor causes losses to the company, as specified in Article 150 of this Law, the shareholders mentioned above may request, in writing, the board of directors or the executive director of a company with limited liability where there is no such board to bring a lawsuit to a people's court.

Where the board of supervisors or the supervisor of a company with limited liability where there is no such board, or the board of directors, or the executive director refuses to take legal proceedings after receiving the written request from the shareholders as specified in the preceding paragraph, or fails to take legal proceedings within 30 days from the date it/he receives such request, or under emergency situations, failure to take legal proceedings immediately results in irreparable damage to the interests of the company, the shareholders specified in the preceding paragraph shall have the right, in their own names, directly to bring a lawsuit to a people's court in the interests of the company.

Where another person infringes upon the lawful rights and interests of a company and thus causes losses to the company, the shareholders specified in the first paragraph of this Article may bring a lawsuit to a people's court in accordance with the provisions of the preceding two paragraphs.

Article 153 Where a director or senior manager violates the provisions of laws, administrative regulations or the company's articles of association and thus damages the interests of the shareholders, the shareholders may bring a lawsuit to a people's court.

## Chapter VII Corporate Bonds

Article 154 For the purposes of this Law, corporate bonds mean negotiable instruments issued by a company in accordance with the statutory procedures and with an agreement reached on the repayment of the principal and the payment of the interests within a given period of time.

To issue corporate bonds, a company shall meet the requirements for such issue as provided for by the Securities Law of the People's Republic of China.

Article 155 After an application for the issue of corporate bonds is verified and approved by the department authorized by the State Council, the company shall announce the method of offer of the corporate bonds.

The following main items shall be specified in the method for offer of the corporate bonds:

- (1) the name of the company;
- (2) the purpose of use of the funds raised in bond form;
- (3) the total amount of the bonds and their par value;
- (4) the method of determining the interest rate of the bonds;
- (5) the time limit for and the method of repaying the principal and paying the interest;
- (6) security for the bonds;
- (7) the issue price of the bonds and the beginning and ending dates for bond issue;
- (8) the net assets value of the company;
- (9) the total amount of the undue bonds issued by the company; and
- (10) the underwriting agency of the corporate bonds.

Article 156 Where a company issues its bonds in the form of certificate, such certificate shall clearly carry thereon items such as the name of the company, the par value, the interest rate, and the time limit for repayment, and shall be signed by the legal representative and sealed by the company.

Article 157 Corporate bonds may be registered bonds and may also be bearer bonds.

Article 158 To issue corporate bonds, the company shall prepare the counterfoils of such bonds.

Where registered corporate bonds are issued, the following items shall be specified in the counterfoils of the corporate bonds:

- (1) the name or title and domicile of the bondholder;
- (2) the date on which the bondholder acquired the bonds and their serial numbers;
- (3) the total amount of the bonds, the par value of the bonds, the interest rate and the time limit for and the method of repayment of the principal and payment of interest; and
- (4) the issue date of the bonds.

Where bearer corporate bonds are issued, the total amount of the bonds, the interest rate, the time limit for and the method of repayment, the issue date and the serial numbers of the bonds shall be specified in the stubs of the corporate bonds.

Article 159 The registration and clearing institution of registered corporate bonds shall establish systems relating to registration and custody of bonds, interest payment, encashment, etc.

Article 160 Corporate bonds may be transferred, and the price for the transfer shall be agreed upon by the transferor and transferee.

Where corporate bonds are listed and traded at stock exchanges, their transfer shall be conducted in accordance with the rules of the stock exchanges governing transactions.

Article 161 Registered corporate bonds shall be transferred by means of endorsement by the bondholders or by other means as provided for by laws or administrative regulations; and after such transfer, the company shall record the name or title and the domicile of the transferee in the stub of the corporate bonds.

Where bearer corporate bonds are transferred, the transfer shall become effective immediately after a bondholder delivers such bonds to a transferee.

Article 162 Upon resolution adopted by its shareholders general assembly, a listed company may issue corporate bonds that can be converted into shares. The specific measures for conversion shall be stipulated in the method of offer of the corporate bonds. The issue of such convertible corporate bonds by a listed company shall be subject to verification and approval by the securities regulatory authority under the State Council.

Where corporate bonds convertible into shares are issued, the words convertible corporate bond shall be clearly indicated on such bonds, and the amount of the convertible corporate bonds shall be recorded in the stubs of such bonds.

Article 163 A company that issues corporate bonds convertible into shares shall convert the bonds of the bondholders into shares in accordance with the conversion measures. However, the bondholders shall have the option whether or not to convert their bonds into shares.

## Chapter VIII Financial Affairs and Accounting of Companies

Article 164 A company shall establish its financial and accounting system in accordance with the provisions of laws, administrative regulations and the rules of the finance department under the State Council.

Article 165 At the end of each fiscal year, a company shall prepare its financial reports, which shall be audited by an accounting firm according to law.

Financial reports shall be prepared in accordance with the provisions of laws, administrative regulations and the rules of the finance department under the State Council.

Article 166 A company with limited liability shall send its financial report to each of its shareholders within the time limit stipulated in its articles of association.

A company limited by shares shall, 20 days prior to the convening of the annual meeting of the shareholders general assembly, make the financial report available at the company for examination by its shareholders; and a company limited by shares that publicly issues its shares shall publicize its financial report.

Article 167 Where a company distributes the annual after-tax profits, it shall allocate 10 percent of its profits for the statutory surplus fund. Where the accumulated amount of the statutory surplus fund of the company exceeds 50 percent of its registered capital, further allocation may be dispensed with.

Where the statutory surplus fund of a company is insufficient to make up the company's losses of the previous year, the company shall, first of all, apply its annual profits to making up its losses prior to allocation for the statutory surplus fund in accordance with the provisions of the preceding paragraph.

After allocating after-tax profits for the surplus fund, a company may, upon resolution adopted by the shareholders assembly or the shareholders general assembly, allocate after-tax profits for its discretionary surplus fund.

After making up its losses and making allocations for its surplus fund, a company with limited liability shall distribute the remaining after-tax profits in accordance with the provisions of Article 35 of this Law; and a company limited by shares shall distribute them to its shareholders in proportion to the shares held by each shareholder, except where the articles of association of the company limited by shares stipulate that such profits shall not be distributed in proportion to the shares held.

Where the shareholders assembly, the shareholders general assembly or the board of directors, in violation of the provisions of the preceding paragraph, distributes profits to the shareholders before the company makes up its losses and makes allocation for the statutory surplus fund, the shareholders shall return to the company the profits distributed to them in violation of the provisions.

No profits shall be distributed to a company for its own shares.

Article 168 The premium income derived from the shares issued above par value by a company limited by shares, and other income which, according to the rules set by the finance department under the State Council, should be enlisted into the capital surplus fund shall be put into the capital surplus fund of the company.

Article 169 The surplus fund of a company shall be used to make up for the company's losses or to expand production and operation of the company, or shall be converted into an increase in the

company's capital. However, the capital surplus fund shall not be used for making up the losses of the company.

Where the statutory surplus fund is converted capital, the remaining amount of such surplus fund shall not be less than 25 percent of the registered capital prior to such conversion.

Article 170 Appointment or dismissal of an accounting firm in charge of the auditing business of a company shall be subject to decision by the shareholders assembly, the shareholders general assembly or the board of directors in accordance with the provisions of the company's articles of association.

Where the shareholders assembly, the shareholders general assembly or the board of directors of a company votes on the dismissal of an accounting firm, it shall allow the accounting firm to state its opinions.

Article 171 A company shall provide authentic and complete accounting vouchers, accounting books, financial and accounting reports and other accounting data to the accounting firm it appoints, and shall not refuse to do so, or conceal the facts or make false reports about them.

Article 172 A company shall not have any other accounting books in addition to the statutory accounting books.

No accounts shall be opened in the name of any individual for deposit of the assets of a company.

## Chapter IX Merger and Division of Companies, Increase and Reduction of Capital

Article 173 Merger of companies may take the form of merger by amalgamation or merger by new establishment.

When a company has another company amalgamated with it, it is merger by amalgamation, and the amalgamated company shall be dissolved. When two or more companies merge to establish a new company, it is merger for new establishment, and all parties being merged shall be dissolved.

Article 174 When companies merge, the parties to the merger shall sign a merger agreement, and draw up a balance sheet and a detailed inventory of assets. The companies shall, within 10 days from the date the resolution on such merger is adopted, notify their creditors of the intended merger, and make an announcement about it in the newspaper within 30 days therefrom. The creditors may, within 30 days from the date they receive the written notice, or within 45 days from the date the announcement is made in case of those who have not received the written notice, claim full repayment of their debts or provision of a corresponding guarantee from the companies.

Article 175 When companies merge, the claims and debts of all the parties to the merger shall be succeeded to by the company that continues to exist after the merger or by the newly established company.

Article 176 Where a company proceeds into a division, its assets shall be divided appropriately.

When a company intends to divide itself, it shall draw up a balance sheet and a detailed inventory of assets. The company shall, within 10 days from the date the resolution on such division is adopted, notify its creditors of the intended division, and make an announcement about it in the newspaper within 30 days therefrom.

Article 177 The companies after the division shall assume joint and several liability for the debts prior to the division, except where the company before the division and its creditors have otherwise reached a written agreement on repayment of the debts.

Article 178 Where a company needs to reduce its registered capital, it shall draw up a balance sheet and a detailed inventory of assets.

The company shall, within 10 days from the date a resolution on reduction of its registered capital is adopted, notify its creditors of such resolution, and shall make an announcement in the newspaper within 30 days therefrom. The creditors shall, within 30 days from the date they receive the written notice, or within 45 days from the date the announcement is made in the case of those who have not received such written notice, have the right to claim full repayment of their debts or provision of a corresponding guarantee from the company.

After reduction of the capital, the amount of the company's registered capital shall not be less than the statutory minimum.

Article 179 Where a company with limited liability increases its registered capital, the capital contributions to newly increased shares subscribed for by the shareholders shall be governed by the relevant provisions of this Law on payment of capital contributions in connection with the incorporation of a company with limited liability.

Where a company limited by shares issues new shares to increase its registered capital, subscription for new shares by the shareholders shall be governed by the relevant provisions of this Law on payment of share subscriptions in connection with the incorporation of a company limited by shares.

Article 180 Where the merger or division of a company involves changes in the registered items, such changes shall, in accordance with law, be registered with the company registration authority; where a company is dissolved, it shall apply for cancellation of its registration according to law; and where a new company is incorporated, it shall have its incorporation registered according to law.

Where a company increases or reduces its registered capital, it shall apply to the company registration authority for registration of such change according to law.

## Chapter X Dissolution and Liquidation of Companies

Article 181 A company shall be dissolved for one of the following reasons:

- (1) Where the term of business operation as stipulated in the company's articles of association expires or other causes for dissolution as stipulated in the articles of association occur;
- (2) Where a resolution on dissolution is adopted by the shareholders assembly or the shareholders general assembly;
- (3) Where merger or division of the company necessitates its dissolution;
- (4) Where the business license of the company is revoked, or the company is ordered to close down, or its registration is cancelled, according to law; or
- (5) Where the people's court has the company dissolved in accordance with the provisions of Article 183 of this Law.

Article 182 Where a company finds itself in the conditions as prescribed in Subparagraph (1) of Article 181 of this Law, it may continue to exist through revision of its articles of association.

In the case of a company with limited liability, revision of the articles of association in accordance with the provisions of the preceding paragraph shall be subject to adoption by the shareholders who hold more than two-thirds of the voting rights; and in the case of a company limited by shares, such a revision shall be subject to adoption by the shareholders present at the meeting of the shareholders general assembly, who hold more than two-thirds of the voting rights.

Article 183 Where a company is confronted with serious difficulties in operation and management, its continued existence may cause grievous losses to the interests of its shareholders and the difficulties cannot be surmounted through other channels, the shareholders holding more than 10 percent of the total number of the voting rights held by all the shareholders of the company may request a people's court to dissolve the company.

Article 184 Where a company is dissolved because of the reasons specified in Subparagraph (1), (2), (4) or (5) of Article 181 of this Law, it shall, within 15 days from the date the reasons for dissolution prevail, set up a liquidation team to begin liquidation. The liquidation team of a company with limited liability shall be composed of its shareholders; and the liquidation team of a company limited by shares shall be composed of its directors or the persons decided on by the shareholders general assembly. Where a company fails to set up a liquidation team to conduct liquidation at the expiration of the prescribed time limit, its creditors may apply to a people's court for designating relevant persons to form a liquidation team for liquidation. The people's court shall accept the application and shall, in a timely manner, organize a liquidation team to conduct liquidation.

Article 185 During the period of liquidation, a liquidation team shall exercise the following functions and powers:

- (1) to check up on the property of the company and draw up a balance sheet and an inventory of its assets separately;
- (2) to notify the creditors by notice or announcement;



- (3) to dispose of and liquidate the company's unfinished business;
- (4) to pay off the tax arrears and the taxes generated in the process of liquidation;
- (5) to clear up claims and debts;
- (6) to dispose of the property remaining after the company pays off its debts; and
- (7) to participate in civil lawsuits on behalf of the company.

Article 186 A liquidation team shall, within 10 days from the date it is established, notify the creditors of its establishment and make an announcement in the newspaper within 60 days therefrom. The creditors shall declare their claims to the liquidation team within 30 days from the date they receive the written notice, or within 45 days from the date the announcement is made, in the case of those who have not received such notice.

When declaring his claims, a creditor shall specify the matters in respect of each claim, and provide supporting materials. The liquidation team shall register the claims.

During the period when creditors declare their claims, the liquidation team shall not pay off the debts to them.

Article 187 After the liquidation team has checked up on the property of a company and drawn up the balance sheet and the inventory of assets, it shall work out a liquidation plan and submit the plan to the shareholders assembly, the shareholders general assembly or a people's court for confirmation.

After a company pays off respectively the liquidation expenses, the wages of its staff and workers, the social insurance premiums and the statutory compensations, pays its tax arrears and clears up its debts, the remaining property of a company with limited liability shall be distributed in proportion to the capital contributions made by its shareholders; and the remaining property of a company limited by shares shall be distributed in proportion to the shares held by its shareholders.

During the period of liquidation, the company shall continue to exist, but it shall not engage in any operational activities not related to liquidation. The property of the company shall not be distributed to its shareholders before it has made the payments as specified in the provisions of the preceding paragraph.

Article 188 If, after checking up on the property of a company and drawing up the balance sheet and the inventory of its property, a liquidation team discovers that the property of the company is insufficient to pay off its debts, it shall, in accordance with law, apply to a people's court for declaration of bankruptcy of the company.

After the people's court has ruled to declare the company bankrupt, the liquidation team shall turn the liquidation matters over to the people's court.

Article 189 After the liquidation of a company is completed, the liquidation team shall prepare a liquidation report and submit the report to the shareholders assembly, the shareholders general assembly or the people's court for confirmation, and shall submit it to the company registration

authority in order to apply for cancellation of the registration of the company and shall announce termination of the company.

Article 190 Members of a liquidation team shall be devoted to their duties and perform their liquidation obligations according to law.

Members of a liquidation team shall not take advantage of their functions and powers to accept bribes or other illegal income, or to take illegal possession of the property of the company.

Where a member of the liquidation team causes losses to the company or its creditors intentionally or through gross negligence, he shall be liable for compensation.

Article 191 Where a company is declared bankrupt according to law, bankruptcy liquidation shall be conducted in accordance with the law on enterprise bankruptcy.

## Chapter XI Branches of Foreign Companies

Article 192 For the purposes of this Law, a foreign company is one that is incorporated outside the territory of the People's Republic of China in accordance with the law of a foreign country.

Article 193 Where a foreign company intends to establish a branch within the territory of the People's Republic of China, it shall submit an application to the competent authority in China together with such relevant documents as its articles of association and the company's registration certificate issued by its country. Upon approval, it shall, according to law, apply to the company registration authority for registration before obtaining a business license for its branch.

Measures for examining and approving the establishment of branches of foreign companies shall be separately formulated by the State Council.

Article 194 Where a foreign company intends to establish a branch within the territory of the People's Republic of China, it shall designate its representative or agent within the territory of the People's Republic of China to take charge of the branch and shall allocate to the branch funds commensurate with the operational activities the branch is engaged in.

Where a minimum amount of operational funds for a branch of a foreign company is required to be prescribed, the State Council shall separately prescribe such amount.

Article 195 The branch of a foreign company shall clearly indicate in its name the nationality and the form of liability of the foreign company.

The branch of a foreign company shall keep at its office a copy of the articles of association of the foreign company.

Article 196 The branch established by a foreign company within the territory of the People's Republic of China shall not have the status of a Chinese legal person.

A foreign company shall bear civil liability for the operational activities engaged in by its branch within the territory of the People's Republic of China.

Article 197 In its business activities conducted within the territory of the People's Republic of China, the branch of a foreign company established upon approval shall observe Chinese laws and shall not impair the public interests of China. The lawful rights and interests of such branch shall be protected by Chinese laws.

Article 198 Where a foreign company intends to dissolve its branch established within the territory of the People's Republic of China, it shall pay off all the debts of the branch according to law and carry out liquidation in accordance with the provisions of this Law on the procedures of company liquidation. It shall not have the property of the branch transferred out of the territory of the People's Republic of China prior to the payment of all its debts.

## Chapter XII Legal Responsibility

Article 199 Where a company, in violation of the provisions of this Law, obtains its registration by making a false report on its registered capital, submitting falsified materials or concealing important facts by other fraudulent means, the company registration authority shall order it to rectify; in the case of a company that makes a false report on its registered capital, it shall be fined not less than 5 percent but not more than 15 percent of the registered capital falsely reported; in the case of a company that submits falsified materials or conceals important facts by other fraudulent means, it shall be fined not less than 50,000 yuan but not more than 500,000 yuan; and if the circumstances are serious, the registration of the company shall be cancelled or its business license shall be revoked.

Article 200 Where a promoter or a shareholder of a company makes a false capital contribution by failing to deliver, or failing to deliver on schedule, his capital contribution in currency or non-currency property, the company registration authority shall order him to rectify, and shall impose on him a fine of not less than 5 percent but not more than 15 percent of the amount of such false capital contribution.

Article 201 Where a promoter or a shareholder of a company secretly withdraws his capital contribution after the incorporation of the company, the company registration authority shall order him to rectify, and shall impose on him a fine of not less than 5 percent but not more than 15 percent of the amount of the capital contribution secretly withdrawn.

Article 202 Where a company, in violation of the provisions of this Law, keep other accounting books in addition to the statutory accounting books, the finance department under the people's government at or above the county level shall order it to rectify, and shall impose on it a fine of not less than 50,000 yuan but not more than 500,000 yuan.

Article 203 Where a company makes false records or conceals important facts in such materials as its financial reports submitted to the relevant competent department according to law, the said

department shall impose a fine of not less than 30,000 yuan but not more than 300,000 yuan on each of the persons directly in charge of the company and of the other persons directly responsible.

Article 204 Where a company fails to allocate the statutory surplus fund in accordance with the provisions of this Law, the finance department under the people's government at or above the county level shall order it make up the amount in full, and may impose on the company a fine of not more than 200,000 yuan.

Article 205 Where a company fails to notify its creditors of its decision to merge, divide, reduce its registered capital or go into liquidation or announce such decision to them, as is required by the provisions of this Law, the company registration authority shall order it to rectify, and shall impose on it a fine of not less than 10,000 yuan but not more than 100,000 yuan.

Where a company, in the process of liquidation, conceals its property, records false information in the balance sheet or the inventory of its property, or distributes its property prior to the payment of all its debts, the company registration authority shall order it to rectify, and shall impose on it a fine of not less than 5 percent but not more than 10 percent of the value of the concealed property or of the amount of the property distributed prior to the payment of all its debts; and the other persons directly in charge and other persons directly responsible shall each be fined not less than 10,000 yuan but not more than 100,000 yuan.

Article 206 Where, during the period of liquidation, a company conducts operational activities not related to liquidation, the company registration authority shall give it a warning and confiscate its unlawful gains.

Article 207 Where a liquidation team fails to submit its liquidation report to the company registration authority in accordance with the provisions of this Law, or conceals or omits important facts in the liquidation report submitted, the company registration authority shall order it to rectify.

Where a member of the liquidation team takes advantage of his functions and powers to engage in malpractices for personal gain or to seek unlawful income, or takes illegal possession of the property of the company, the company registration authority shall order him to return the property to the company and confiscate his unlawful gains, and may impose on him a fine of not less than the amount of the unlawful gains but not more than five times that amount.

Article 208 Where an institution in charge of assets assessment, capital verification or certificate verification provides false information, the company registration authority shall confiscate its unlawful gains and impose on it a fine of not less than the amount of the unlawful gains but not more than five times that amount, and the department in charge may, in accordance with law, order the institution to suspend business, revoke the qualification certificate of the person directly responsible, or revoke the institution's business license.

Where an institution in charge of assets assessment, capital verification or certificate verification provides, due to negligence, a report with major omissions, the company registration authority shall order it to rectify; and if the circumstances are relatively serious, a fine of not less than the amount of its gains derived therefrom but not more than five times that amount shall be imposed

on it, and the department in charge may, in accordance with law, order the institution to suspend business, revoke the qualification certificate of the person directly responsible, or revoke the institution's business license.

Where losses are caused to the creditors of a company due to the misrepresentation of the assessment result, capital verification or certificate verification prepared by an institution in charge of assets assessment, capital verification or certificate verification, the institution shall be liable for compensation within the amount of the misrepresented assessment or verification, except where it can prove itself faultless.

Article 209 Where the company registration authority approves an application for registration which does not meet the conditions for registration as stipulated by this Law, or does not approve an application for registration which meets the conditions for registration as stipulated by this Law, the persons directly in charge and the other persons directly responsible shall be given administrative sanctions according to law.

Article 210 Where a department at a higher level peremptorily orders a company registration authority to have registered with it a company whose application for registration does not meet the requirements for registration as stipulated by this Law, or not to have registered with it a company whose application for registration meets the requirements for registration as stipulated by this Law, or covers up an illegal registration, the persons directly in charge and the other persons directly responsible shall be given administrative sanctions according to law.

Article 211 Where an entity that has not registered according to law as a company with limited liability or a company limited by shares assumes the name of such company, or where an entity that has not registered according to law as the branch of a company with limited liability or of a company limited by shares assumes the name of such branch, the company registration authority shall order it to rectify or have it banned and may, in addition, impose on it a fine of not more than 100,000 yuan.

Article 212 Where a company, without justifiable reasons, fails to commence business for more than six months after its incorporation, or after commencement of business it suspends business operation of its own accord for six or more consecutive months, the company registration authority may revoke its business license.

Where a company fails to apply for registration of alterations in accordance with the provisions of this Law when items of company registration are altered, the company registration authority shall order it to have the alterations registered within a specified time limit; and if it fails to comply at the expiration of the time limit, it shall be fined not less than 10,000 yuan but not more than 100,000 yuan.

Article 213 Where a foreign company, in violation of the provisions of this Law, establishes a branch within the territory of the People's Republic of China, the company registration authority shall order it to rectify or to close the branch, and may, in addition, impose on the foreign company a fine of not less than 50,000 yuan but not more than 200,000 yuan.

Article 214 Where a company takes advantage of the name of the company to engage in serious illegal activities which endanger State security or harm public interests, the business license of the company shall be revoked.

Article 215 Where a company, for violation of the provisions of this Law, should assume civil liability for compensation and pay fines or penalties but its property is insufficient to make such payment, it shall assume the civil liability for compensation first.

Article 216 Where a crime is constituted due to violation of the provisions of this Law, criminal responsibility shall be investigated according to law.

### Chapter XIII Supplementary Provisions

Article 217 The following terms used in this Law mean:

- (1) Senior managers include the manager, deputy manager and the person in charge of financial affairs of a company, and the secretary of a board of directors of a listed company and the other persons specified in a company's articles of association.
- (2) A proprietary shareholder means a shareholder whose capital contribution accounts for more than 50 percent of the total capital of a company with limited liability or the amount of the shares who holds accounts for more than 50 percent of the total amount of the shares of a company limited by shares; and a shareholder, although the amount of his capital contribution or the proportion of the shares he holds is less than 50 percent, whose voting rights enjoyed on the basis of the amount of capital contribution made or the number of shares held are enough to have a vital bearing on the resolutions of a shareholders assembly or a shareholders general assembly.
- (3) An actual controller means a person who is able practically to govern the behavior of a company through investment relations, agreements or other arrangements, although the person is not a shareholder of the company.
- (4) Affiliated relations mean the relations between the proprietary shareholder, actual controller, director, supervisor and senior manager of a company with the enterprises which are directly or indirectly under their control, and other relations which may lead to transfer of the company's interests. However, affiliated relations do not exist among the holding companies of the State although their shares are held by the State in common.

Article 218 This Law shall be applicable to foreign-invested companies with limited liability and such companies limited by shares; and where laws on foreign investments provide otherwise, the provisions there shall be applicable.

Article 219 This Law shall go into effect as of January 1, 2006.

# **Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People**

Adopted at the First Session of the Seventh National People's Congress and promulgated by Order No.3 of the President of the People's Republic of China on April 13, 1988, and effective as of August 1, 1988

## Contents

### Chapter I General Provisions

### Chapter II The Establishment, Modification and Termination of the Enterprise

### Chapter III Rights and Obligations of the Enterprise

### Chapter IV The Factory Director

### Chapter V The Staff and Workers and the Staff and Workers' Congress

### Chapter VI The Relationship Between the Enterprises and the Government

### Chapter VII Legal Liabilities

### Chapter VIII Supplementary Provisions

### Chapter I General Provisions

Article 1 This Law is formulated in accordance with the Constitution of the People's Republic of China with a view to ensuring the consolidation and development of the economic sector under ownership by the whole people, defining the rights and obligations of industrial enterprises owned by the whole people, safeguarding their lawful rights and interests, enhancing their vitality and promoting socialist modernization.

Article 2 An industrial enterprise owned by the whole people (hereinafter referred to as the enterprise ) shall be a socialist commodity production and operation unit which shall, in accordance with law, make its own managerial decisions, take full responsibility for its profits and losses and practise independent accounting.

The property of the enterprise shall be owned by the whole people, and shall be operated and managed by the enterprise with the authorization of the State in line with the principle of the separation of ownership and managerial authority. The enterprise shall enjoy the rights to possess, utilize and dispose of, according to law, the property which the State has authorized it to operate and manage.

The enterprise shall obtain the status of a legal person in accordance with law and bear civil liability with the property which the State has authorized it to operate and manage.

The enterprise may, in accordance with the decision of the competent department of the government, adopt contract, leasing or other forms of the system of managerial responsibility.

Article 3 The fundamental task of the enterprise shall be the development of commodity production, creation of wealth, increase of savings and satisfaction of society's growing material and cultural requirements by acting in line with State plans and market demands.

Article 4 While achieving socialist material growth, the enterprise must persistently promote socialist cultural and ideological progress and build up a contingent of well-educated and self-disciplined staff and workers with high ideals and moral integrity.

Article 5 The enterprise must observe the laws and regulations and keep to the socialist orientation.

Article 6 The enterprise must effectively utilize the property which the State has authorized it to operate and manage and realize the multiplication of its assets; the enterprise must, according to law, pay taxes and fees and hand in profits.

Article 7 The enterprise shall implement the system whereby the factory director (manager) assumes overall responsibility for the work of the enterprise.

The factory director shall exercise functions and powers according to law, which shall be protected by law.

Article 8 The grassroots organization of the Chinese Communist Party in the enterprise shall guarantee and supervise the implementation of the guiding principles and policies of the Party and the State in the enterprise.

Article 9 The State shall ensure that the staff and workers enjoy the status of the masters, and the lawful rights and interests of the staff and workers shall be protected by law.

Article 10 The enterprise shall, through the staff and workers' congress and other forms, practise democratic management.

Article 11 The trade union in the enterprise shall represent and safeguard the interests of the staff and workers and conduct its work independently according to law. The trade union in the enterprise shall organize the staff and workers for participation in democratic management and democratic supervision.

The enterprise shall bring into full play the role of the young staff and workers, the women staff and workers and scientific and technical personnel.

Article 12 The enterprise must strengthen and improve its operation and management, implement the economic responsibility system, promote scientific and technological progress, practise economy, combat waste, improve economic results and further its own transformation and development.



Article 13 The enterprise shall implement the principle of distribution according to work. It may also adopt other forms of distribution within the scope prescribed by law. Article 14 The property which the State has authorized the enterprise to operate and manage shall be protected by law and shall not be infringed upon.

Article 15 The lawful rights and interests of the enterprise shall be protected by law and shall not be infringed upon.

## Chapter II The Establishment, Modification and Termination of the Enterprise

Article 16 The establishment of the enterprise must conform to the law and the relevant provisions of the State Council, and the application for the establishment must be submitted to the government or the competent department of the government for examination and approval. The enterprise shall obtain the status of a legal person after it is approved by, registers itself with and receives a business license from the administrative authorities for industry and commerce.

The enterprise shall carry out its productive and operational activities within the approved and registered scope of operation.

Article 17 An enterprise must meet the following qualifications for its establishment:

- 1) Its products are needed by society;
- 2) It has access to the required energy sources, raw and processed materials, and communication and transportation facilities;
- 3) It possesses a name of its own and premises for production and operation;
- 4) It possesses funds in conformity with State provisions;
- 5) It possesses its own organizational structure;
- 6) It has a definite scope of operation; and
- 7) Other qualifications as provided by the laws and regulations;

Article 18 The merger of enterprises or the division of an enterprise shall be subject to approval by the government or the competent department of the government in accordance with the provisions of the laws and administrative rules and regulations.

Article 19 An enterprise shall be terminated for any of the following reasons:

- 1) being abolished due to its violation of the laws and regulations;
- 2) being dissolved by decision of the competent department of the government made in accordance with the provisions of the laws and regulations;

3) being declared bankrupt in accordance with law; or

4) other reasons.

Article 20 When an enterprise is merged with another enterprise or other enterprises or when it is divided or terminated, its property must be protected and its claims and debts shall be liquidated according to law. Article 21 The modification of registered items such as the merger of enterprises and the division or termination of the enterprise, and the scope of operation shall be subject to approval by and registration with the administrative authorities for industry and commerce.

### Chapter III Rights and Obligations of the Enterprise

Article 22 The enterprise shall, under the guidance of State plans, have the right to arrange on its own the production of products needed by society or the provision of services for society.

Article 23 The enterprise shall have the right to request for the adjustment of mandatory plans when the needed materials subject to planned allocation are unavailable or when no arrangements are made for product sales.

The enterprise shall have the right to accept or reject production assignments given by any department or unit outside the mandatory plans.

Article 24 The enterprise shall have the right to sell its products on its own, except as otherwise stipulated by the State Council.

An enterprise undertaking production according to a mandatory plan shall have the right to market for itself products manufactured in excess of the planned quota and products it retains as its share under the plan.

Article 25 The enterprise shall have the right to choose the suppliers for itself and purchase from them materials needed for production.

Article 26 The enterprise shall have the right to determine for itself the prices of its products and the charges for its services, except for those which, as stipulated by the State Council, are under the control of the price authorities and the relevant competent departments.

Article 27 The enterprise shall have the right to negotiate and sign contracts with foreign parties in accordance with the provisions of the State Council.

The enterprise shall have the right to withdraw and use, according to the provisions of the State Council, the foreign exchange revenues it retains as its share.

Article 28 The enterprise shall have the right to budget and use its retained funds in accordance with the provisions of the State Council.

Article 29 The enterprise shall have the right, in accordance with the provisions of the State Council, to lease out or transfer against compensation the fixed assets that the State has authorized it to operate and manage, but the proceeds therefrom must be used for the renewal of equipment and technical transformation. Article 30 The enterprise shall have the right to determine such forms of wages and methods of bonus distribution as are appropriate to its specific conditions.

Article 31 The enterprise shall have the right to employ or dismiss its staff members and workers in accordance with the provisions of the State Council.

Article 32 The enterprise shall have the right to decide on its organizational structure and the size of its personnel.

Article 33 The enterprise shall have the right to reject the exaction of its manpower, materials and financial resources in the form of apportionment by any State organ or unit. Except as otherwise stipulated by the laws and regulations, any demand made on the enterprise by any State organ or unit in any form for the provision of manpower, materials and financial resources shall be exaction by apportionment.

Article 34 The enterprise shall have the right, in accordance with law and the provisions of the State Council, to engage in joint operations with other enterprises or institutions, to invest in other enterprises or institutions and to hold shares in other enterprises.

The enterprise shall have the right to issue bonds in accordance with the provisions of the State Council.

Article 35 The enterprise must fulfil the mandatory plans.

The enterprise must perform the contracts concluded according to law.

Article 36 The enterprise must ensure the normal maintenance of its fixed assets and upgrade and renew its equipment.

Article 37 The enterprise must observe State provisions concerning finance, labour and wages, price control, etc., and accept supervision by the financial, auditing, labour and wage, price and other administrative authorities.

Article 38 The enterprise must guarantee the quality of its products and services and be responsible to users and consumers.

Article 39 The enterprise must raise labour efficiency, economize the use of energy and of raw and processed materials and strive to reduce costs.

Article 40 The enterprise must strengthen its security work, maintain the order of production and protect State property.

Article 41 The enterprise must implement the system of safe production, improve labour conditions, do good work in labour protection and environmental protection, and carry on production in a safe and civilized manner.

Article 42 The enterprise shall strengthen ideological and political education, legal education, national defence education, scientific and cultural education as well as technical and vocational training so as to raise the quality of its staff and workers.

Article 43 The enterprise shall support its staff and workers in scientific research, invention and creation and activities for technical innovation, for making rationalization proposals and for socialist labour emulation, and reward them for such endeavours.

#### Chapter IV The Factory Director

Article 44 Except as otherwise stipulated by the State Council, the selection of the factory director shall be made by the competent department of the government in the light of the specific conditions of the enterprise by one of the following methods:

- 1) appointment by the competent department of the government or choice of an applicant on a competitive basis by the same department; or
- 2) election by the staff and workers' congress of the enterprise.

With respect to the person to be appointed or the applicant to be chosen as factory director by the competent department of the government, the opinions of the staff and workers shall be solicited, with respect to the person elected as factory director by the staff and workers' congress of the enterprise, his appointment shall be reported to the competent department of the government for approval.

The removal or dismissal of the factory director appointed or chosen from applicants by the competent department of the government shall be decided upon by such department, while the opinions of representatives of the staff and workers shall be solicited; the recall of the factory director elected by the staff and workers' congress of the enterprise shall be decided by such congress and reported to the competent department of the government for approval.

Article 45 The factory director shall be the legal representative of the enterprise.

The enterprise shall establish a system of production, operation and management headed by the factory director. The factory director shall occupy the central position in the enterprise and assume overall responsibility for building up a materially developed and culturally and ideologically advanced enterprise.

The factory director shall exercise leadership in the production, operation and management of the enterprise by exercising the following functions and powers:

- 1) to decide on the various plans of the enterprise or report them for examination and approval in accordance with law and the provisions of the State Council.
- 2) to decide on the administrative setup of the enterprise;

- 3) to propose to the competent department of the government the appointment or removal, employment or dismissal of leading administrative cadres at the level of a vice-director of the factory, except as otherwise stipulated by law and the provisions of the State Council;
- 4) to appoint or remove, employ or dismiss the intermediate-level leading administrative cadres of the enterprise, except as otherwise stipulated by law;
- 5) to propose plans for wage adjustment and bonus distribution and important rules and regulations, and refer them to the staff and workers' congress for examination and approval; to propose programmes for the use of the welfare fund and make suggestions regarding such other matters as are important for the well-being and benefits of the staff and workers, and to refer them to the staff and workers' congress for deliberation and decision; and
- 6) to reward or punish the staff members and workers according to law; to submit to the competent department of the government proposals for rewarding or punishing leading administrative cadres at the level of a vice-director of the factory.

Article 46 The factory director must rely on the staff members and workers for the fulfilment of the obligations of the enterprise prescribed in this Law, support the work of the staff and workers' congress, the trade union and other public organizations, and implement the decisions made according to law by the staff and workers' congress.

Article 47 The enterprise shall establish a management committee or some other forms of organization to assist the factory director in making decisions on important issues of the enterprise. The management committee, with the factory director as its chairman, shall be composed of leading persons in charge of various aspects of the enterprise and representatives of the staff and workers.

The important issues as mentioned in the preceding paragraph shall include:

- 1) the policy of operation, long-term and annual plans, programmes for capital construction and major technical transformation, plans for the training of the staff and workers, plans for wage adjustment, programmes for the distribution and use of the retained funds and programmes for contract and leasing systems of managerial responsibility.
- 2) the size of the personnel of the enterprise whose wages are counted as cost of the enterprise and the establishment and adjustment of administrative organs; and
- 3) programmes for the formulation, revision and abrogation of major rules and regulations.

Proposals for discussion of the foregoing important issues shall all be made by the factory director.

Article 48 Factory directors who have made outstanding achievements in leading the enterprises in fulfilling their plans, raising product or service quality, improving economic results or promoting cultural and ideological progress shall be rewarded by the competent department of the government.

## Chapter V The Staff and Workers and the Staff and Workers' Congress

Article 49 The staff and workers of the enterprise shall have the right to participate in its democratic management; the right to put forward opinions and suggestions concerning its production and work; the right to enjoy, according to law, labour protection, labour insurance, rest and vacation; and the right to report the true situation to State organs and make criticisms and charges against the leading cadres of the enterprise. Women staff and workers shall have the right to enjoy special labour protection and labour insurance in accordance with the provisions of the State.

Article 50 The staff and workers should approach their work as the masters of the country that they are, observe labour discipline and the rules and regulations, and fulfil their tasks in production and work.

Article 51 The staff and workers' congress shall be the basic form for the practice of democratic management in the enterprise and the organ for the staff and workers to exercise their powers of democratic management.

The working organ of the staff and workers' congress shall be the trade union committee of the enterprise. The trade union committee of the enterprise shall be responsible for the day-to-day work of the staff and workers' congress.

Article 52 The staff and workers' congress shall exercise the following functions and powers:

- 1) to hear and deliberate the factory director's reports on the policy of operation, long-term and annual plans, programmes for capital construction and major technical transformation, plans for the training of the staff and workers, programmes for the distribution and use of the retained funds and programmes for contract and leasing systems of managerial responsibility, and to put forward opinions and suggestions;
- 2) to examine and endorse or to reject the enterprise's programmes for wage adjustment, programmes for bonus distribution, measures for labour protection, measures for awards and penalties and other important rules and regulations;
- 3) to deliberate and decide on the programmes for the use of the staff and workers' welfare fund, programmes for the allocation of the staff and workers' housing and other important matters concerning the well-being and benefits of the staff and workers;
- 4) to evaluate and supervise the leading administrative cadres at various levels of the enterprise and put forward suggestions for rewarding or punishing them and for their appointment or removal; and
- 5) to elect, by decision of the competent department of the government, the factory director and report to such department for approval.

Article 53 Democratic management shall be practised in workshops through the general meetings of the staff and workers, through the staff and workers representative groups or through other forms; the workers shall participate directly in the democratic management of shifts and groups.

Article 54 The staff and workers' congress shall support the factory director in exercising his functions and powers according to law and shall educate the staff and workers for the fulfilment of their obligations specified in this Law.

## Chapter VI The Relationship Between the Enterprises and the Government

Article 55 The government or the competent department of the government shall, in accordance with the provisions of the State Council, issue unified mandatory plans to the enterprises, ensure the supply of materials which are subject to planned allocation and needed by the enterprises for the fulfilment of mandatory plans, examine and approve plans submitted by the enterprises for capital construction and major technical transformation, appoint or remove, reward or punish factory directors, appoint or remove, reward or punish leading administrative cadres at the level of a vice-director of a factory, as proposed by factory directors, and examine and train leading administrative cadres at the factory level.

Article 56 The relevant departments of the government shall, in conformity with the objective that the State regulates the market and the market guides the enterprises, provide services for the enterprises and exercise administration and supervision over the enterprises in line with their respective functions and in accordance with the provisions of the laws and regulations. These departments shall:

- 1) formulate and adjust industrial policies, and guide the enterprises in working out their development plans;
- 2) provide advice and information for the enterprises to make their operational decisions;
- 3) coordinate the relations between the enterprises and other units;
- 4) safeguard the normal production order of the enterprises, and protect from infringement the State property operated and managed by the enterprises; and
- 5) gradually improve the public facilities related to the enterprises.

Article 57 The local governments at or above the county level in the locality of an enterprise shall provide it with the needed materials which are subject to local planning and control, coordinate the relations between the enterprises and other units in the locality, and strive to run well the public welfare undertakings related to the enterprises.

Article 58 No State organ or unit shall be permitted to encroach on the right which the enterprise enjoys according to law to make its own decisions in operation and management, or to exact manpower, materials or financial resources from the enterprise by way of apportionment, or to

demand the establishment of an organ by the enterprise or to determine the size of the personnel of an organ.

## Chapter VII Legal Liabilities

Article 59 Whoever has conducted productive and operational activities in the name of an enterprise in violation of the provisions of Article 16 of this Law, without prior examination and approval by the government or the competent department of the government and without approval by and registration with the administrative authorities for industry and commerce, shall be ordered to suspend his business operations, and his illegal earnings shall be confiscated.

An enterprise that practises fraud in dealing with the registration authorities and conceals the true situation from them shall be given a warning or punished with a fine; where the circumstances are serious, its business license shall be revoked.

The administrative punishment prescribed in this Article shall be decided upon by the administrative authorities for industry and commerce at or above the county level. If the party in question refuses to accept the decision on punishment in the form of a fine, the suspension of operations, the confiscation of illegal earnings or the revocation of the business license, it may file a suit in a court within 15 days of receiving the notification on the decision; if no suit is filed by the time limit and the decision is not complied with, the authorities that made the decision on punishment may apply to the court for compulsory enforcement.

Article 60 An enterprise that produces and sells substandard products and thereby causes property damage or physical injury to users and consumers shall be liable for damages; if a crime is constituted, the person or persons directly responsible shall be investigated for criminal responsibility according to law.

An enterprise whose product quality does not conform to the terms agreed upon in the economic contract shall be liable for breach of contract.

Article 61 If a decision of the government or the relevant department of the government violates the provisions of Article 58 of this Law, the enterprise shall have the right to apply to the authorities that made the decision for rescission. If no rescission is granted, the enterprise shall have the right to appeal to the authorities at the level next higher to the authorities that made the decision or to a supervisory department of the government. The authorities that accept the appeal shall make a ruling and notify the enterprise of it within 30 days of receiving the appeal.

Article 62 Any leading cadre of the enterprise, who violates the lawful rights and interests of the staff and workers by abusing his power, where the circumstances are serious, shall be given an administrative sanction by the competent department of the government; any leading cadre of the enterprise who retaliates against and frames up charges against staff members or workers by abusing his power and using his public office for private ends shall be investigated for criminal



responsibility in accordance with the provisions of Article 146 of the Criminal Law of the People's Republic of China.

Article 63 Any leading cadre of the enterprise or of the relevant department of the government who, due to faults in his work, causes relatively heavy losses to the enterprise and the State, shall be given an administrative sanction by the competent department of the government or the relevant State organ at a higher level.

Any leading cadre of the enterprise or of the relevant department of the government who, due to neglect of duty, causes the property of the enterprise or the interests of the State and the people to suffer heavy losses, shall be investigated for criminal responsibility in accordance with the provisions of Article 187 of the Criminal Law of the People's Republic of China.

Article 64 Whoever obstructs, without resorting to violence or threat, the enterprise leaders from carrying out their functions according to law, shall be punished by the public security organ in the locality of the enterprise in accordance with the provisions of Article 19 of the Regulations of the People's Republic of China on Administrative Penalties for Public Security; whoever by means of violence or threat obstructs the enterprise leaders from carrying out their functions according to law shall be investigated for criminal responsibility in accordance with the provisions of Article 157 of the Criminal Law of the People's Republic of China.

Whoever disturbs the order of the enterprise, thereby making it impossible for production, business operations and work to go on smoothly, but has not caused serious losses, shall be punished by the public security organ in the locality of the enterprise in accordance with the provisions of Article 19 of the Regulations of the People's Republic of China on Administrative Penalties for Public Security; if the circumstances are so serious that production, business operations and work cannot be carried on and serious losses are caused, he shall be investigated for criminal responsibility in accordance with the provisions of Article 158 of the Criminal Law of the People's Republic of China.

## Chapter VIII Supplementary Provisions

Article 65 The principles of this Law shall be applicable to enterprises owned by the whole people in communications and transportation, the postal and telecommunications service, geological exploration, construction and installation, commerce, foreign trade, materials supply, agriculture, forestry and water conservancy. Article 66 If the enterprise implements the contract and leasing systems of managerial responsibility, the party awarding the contract and the contractor, the lessor and the lessee, with regard to their respective rights and obligations, shall implement the relevant provisions of the State Council, apart from abiding by the provisions of this Law.

With respect to the system of leadership in jointly operated enterprises, large-scale associated enterprises and stock enterprises, the relevant provisions of the State Council shall be implemented.

Article 67 The State Council shall, in accordance with this Law, formulate rules for implementation.

Article 68 The standing committees of the people's congresses of the autonomous regions may, in accordance with the principles of this Law and the Law of the People's Republic of China on Regional National Autonomy and in the light of the special features of their respective localities, formulate rules for implementation and report them to the Standing Committee of the National People's Congress for the record.

Article 69 This Law shall go into effect as of August 1, 1988.

## **Law of the People's Republic of China on Township Enterprises**

Adopted at the 22nd Meeting of the Standing Committee of the Eighth National People's Congress on October 29, 1996, promulgated by Order No. 76 of the President of the People's Republic of China on October 29, 1996

Article 1 This Law is enacted for the purpose of facilitating and guiding the sound and sustained development of township enterprises, protecting their legitimate rights and interests, standardizing their operations, bringing about a prosperous rural economy and promoting the socialist modernization drive.

Article 2 The term "township enterprises" as used in this Law refers to the different types of enterprises that are established in townships(including the villages under their jurisdiction) with the bulk of their capital being invested by rural economic collectives or farmers and that undertake the obligations to support agriculture .

The words "the bulk of their capital" as used in the preceding paragraph mean that the capital invested by the rural economic collectives or farmers exceeds 50 percent of the total, or is less than 50 percent but enough to play a holding or dominating role.

A township enterprise that meets the qualifications for an enterprise legal person shall obtain the status of a legal person as an enterprise.

Article 3 Township enterprises provide the mainstay of the rural economy and constitute an important component of the national economy.

The main tasks of township enterprises are to develop production of commodities in light of market demands, provide service to the public, increase the supply of marketable products, absorb surplus rural labor, help raise the income of farmers, support agriculture, advance agricultural and rural modernization and promote the development of the national economy and social undertakings.

Article 4 In developing township enterprises, the principle of taking the rural collective economy as the leading force and promoting the simultaneous development of the diversified economic sectors shall be adhered to.

Article 5 The State gives active support to township enterprises, makes rational planning for their development, provides different guidance to different types of them and administer their affairs pursuant to law.

Article 6 The State encourages and mainly helps the economically underdeveloped areas and areas inhabited by ethnic minorities to develop township enterprises, and encourages township enterprises and other economic organizations in economically developed areas to support, by different means, the economically underdeveloped areas and areas inhabited by ethnic minorities in their efforts to run township enterprises.

Article 7 The administrative department for township enterprises under the State Council and other relevant departments shall, in accordance with their respective functions and responsibilities, make plans for and arrange coordination among, exercise supervision over and provide service to township enterprises nationwide; the administrative departments for township enterprises and other relevant departments of the local people's governments at or above the county level shall, in accordance with their respective functions and responsibilities, do the same with regard to township enterprises within their respective administrative regions.

Article 8 The township enterprises established through registration pursuant to law shall go through the procedure of registration for the record with the local administrative department for township enterprises.

Where a township enterprise wishes to change its name or domicile, or to divide itself or merger with another, to suspend operation or close down, it shall, after making the registration of alteration, establishment or cancellation according to law, report to the administrative department for township enterprises for the record.

Article 9 The branches established in cities by township enterprises and the enterprises set up by rural economic collectives in cities to undertake the obligations in support of agriculture shall be treated as township enterprises.

Article 10 Where a township enterprise is established with the investment of rural economic collectives, its property rights shall be owned collectively by all the farmers who help establish such enterprise.

Where a township enterprise is established with the joint investment of rural economic collectives and other enterprises, organizations or individuals, its property rights shall be owned by the investors in proportion to the amount of their shares.

Where a township enterprise is established with the investment of farmers in partnership or of a farmer alone, its property rights shall be owned by the investor(s).

Article 11 Township enterprises shall, in accordance with law, practise independent accounting and independent management and take full responsibility for its own profits and losses.

A township enterprise that has acquired the status of an enterprise legal person shall enjoy the right to the property of the legal person.

Article 12 The State protects the lawful rights and interests of township enterprises; the legitimate property of township enterprises shall be inviolable.

No organizations or individuals may, in violation of laws, administrative rules and regulations, intervene in the production and operation of township enterprises, remove or replace the leading members of the enterprises; and they may not illegally take into their own possession or use without compensation the property of township enterprises.

Article 13 Township enterprises shall be established in the forms provided by laws, administrative rules and regulations. The investors shall, in accordance with relevant laws, administrative rules

and regulations, decide on major issues of the enterprises, institute operation and management systems, and enjoy the rights and undertake the obligations according to law.

Article 14 Township enterprises shall practise democratic management in accordance with law. The investors shall, before instituting the operation and management systems of the enterprise, deciding on the leading members of the enterprise, making decisions concerning major issues such as operation, the employees' wages and welfare, their occupational protection and safety, listen to the opinions of the trade union and the employees of such enterprise, regularly make public the implementation of the above-mentioned decisions and accept supervision by the employees.

Article 15 The State encourages the institution of a sound social insurance system for the employees of township enterprises in areas where conditions permit.

Article 16 If a township enterprise suspends operation or closes down, where the social insurance system has been instituted, it shall make arrangements for the employees in accordance with relevant regulations; where a labour contract has been concluded, it shall handle the matter as agreed in the contract. Those employees who came from rural economic collectives shall have the right to return to their original rural economic collectives to engage in production or they may try to seek jobs themselves.

Article 17 Township enterprises shall draw a certain proportion of their after-tax profits to support agriculture and to spend on rural social undertakings. The proportion of such profits and measures for its use and management shall be prescribed by the people's governments of provinces, autonomous regions and municipalities directly under the Central Government.

Unless otherwise provided by laws, administrative rules and regulations, no State organs, organizations or individuals may, in whatever form, impose charges on or apportion expenses among township enterprises.

Article 18 The State reduces a certain proportion of the tax to be collected from township enterprises for a certain period of time, depending on the level of their development. The types of tax to be reduced, the period of time for and the proportion of such reduction shall be prescribed by the State Council.

Article 19 The State applies a preferential policy of taxation, for a certain period of time and in light of different circumstances, towards the small and medium-sized township enterprises that meet one of the following conditions:

- (1) being a collectively owned township enterprise that truly has difficulties in operation in the incipient stage after its establishment;
- (2) being established in an area inhabited by ethnic minorities or in an outlying and poverty-stricken area;
- (3) being engaged in processing, storage, transport or marketing of grain, feed or meat; or
- (4) being in need of special assistance according to the industrial policy of the State.

The specific measures for executing the preferential policy of taxation mentioned in the preceding paragraph shall be prescribed by the State Council.

Article 20 The State encourages and facilitates the development of township enterprises by means of credit and loan. With regard to the township enterprises that meet one of the conditions provided in the preceding article and the qualifications for loan, the relevant financial institutions of the State may grant them priority loan or provide concessional loan to the ones that lack funds for production but have a promising future.

The specific measures for granting priority loan and concessional loan mentioned in the preceding paragraph shall be prescribed by the State Council.

Article 21 The people's governments at or above the county level may, in accordance with the relevant regulations of the State, set up development funds for township enterprises. The funds shall consist of the following:

- (1) the working funds allocated by the government for the development of township enterprises;
- (2) a certain proportion of the increased taxes annually turned over to the local people's governments by the township enterprises;
- (3) the profits derived from use of the funds; and
- (4) the funds provided of their own free will by the rural economic collectives, township enterprises and farmers.

Article 22 The development funds for township enterprises shall specially be used for supporting the development of such enterprises in the following ways:

- (1) to support the development of township enterprises in areas inhabited by ethnic minorities, in outlying areas and poverty-stricken areas;
- (2) to support economic and technological cooperation between township enterprises in economically developed areas and such enterprises in economically underdeveloped areas and areas inhabited by ethnic minorities and support their efforts in undertaking jointly-invested projects.
- (3) to support township enterprises in their efforts to readjust the structure of production and the mix of their products in accordance with the industrial policy of the State;
- (4) to support township enterprises in their efforts to update technology, to develop famous-brand, special, excellent and new products and to produce traditional handicrafts;
- (5) to develop such township enterprises as manufacture means of production for agriculture or directly serve the needs of agricultural production.
- (6) to develop such township enterprises as are engaged in processing, storage, transport and marketing of grain, feed and meat;

(7) to support vocational education and technical training for employees of township enterprises; and

(8) other projects that need support.

The specific measures for establishment, use and management of the development funds for township enterprises shall be formulated by the State Council.

Article 23 The State helps train skilled people for township enterprises and encourages scientists, technicians, managers and administrators and graduates of universities, colleges and specialized secondary schools to work in such enterprises and serve them in various ways.

Township enterprises shall, through various channels and forms, train their own technicians, managers and administrators and producers and adopt preferential measures to recruit skilled people.

Article 24 The State adopts preferential measures to encourage all forms of economic and technological cooperation between township enterprises on the one hand and scientific research institutions, institutions of higher learning, State-owned enterprises and other enterprises and organizations on the other.

Article 25 The State encourages township enterprises to carry out economic and technological cooperation and exchange with other countries, build export-oriented commodity production bases and increase foreign exchange earnings from exports.

Township enterprises that meet the requirements may, after approval in accordance with law, be authorized to engage in foreign trade.

Article 26 Local people's governments at all levels shall, under the principle of unified planning and rational geographical distribution, combine the development of township enterprises with the construction of small towns, guide and promote the properly concentrated development of township enterprises and gradually increase the building of infrastructure and service facilities to accelerate the construction of small towns.

Article 27 Township enterprises shall, in accordance with market demand and the industrial policy of the State, appropriately readjust the structure of production and the mix of products, promote technical updating, constantly adopt advanced technology, production techniques and equipment and improve the standard of management and administration.

Article 28 The land used for construction of township enterprises shall be in line with the general plan for the use of land, and it shall be kept under strict control and used rationally and economically; where it is possible to use wasteland or land of inferior quality, no cultivated land or land of good quality shall be used.

Where land owned by rural collectives is used for construction of a township enterprise, relevant procedures shall have to be gone through to obtain approval and to register for the use of the land in accordance with laws and regulations.

If the land owned by rural collectives to be used for construction of a township enterprise has been left unused for two successive years or more, or left unused for one year or more because its construction has been called off, the right to use of the land shall be taken over by the original owner, which shall make new arrangement for its use.

Article 29 Township enterprises shall rationally develop and use natural resources in accordance with law.

In order to extract mineral resources, a township enterprise must, in accordance with relevant laws, obtain approval of the relevant department, a mining permit and a production permit, operate in line with relevant rules and guard against waste of resources, and destruction of resources is strictly prohibited.

Article 30 Township enterprises shall, in accordance with relevant regulations of the State, set up a financial and accounting system to tighten financial control and keep account books according to law to record financial activities truthfully.

Article 31 Township enterprises must, according to the statistical regulations of the State, submit reports of truthful statistical data. They shall have the right to refuse to fill in statistical survey forms prepared and issued in violation of State regulations.

Article 32 Township enterprises shall go through the formalities for tax registration according to law, submit tax returns regularly and pay taxes in full.

The people's governments at all levels shall strengthen the administration of tax collection in relation to township enterprises in accordance with law and the relevant administrative department shall not reduce the taxes of township enterprises or exempt them from taxation beyond the limit of its authority for administration.

Article 33 Township enterprises shall pay close attention to the quality control of their products and make efforts to improve the quality; the products they manufacture and market must meet both the national standards and the trade standards for safeguarding human health and safety of the person and property; no products that have ceased to be effective, that have gone bad or that have been eliminated by formal State orders shall be manufactured or marketed; and it is forbidden to mix impurities or imitations into products, or pass a fake or defective product off as a genuine or good one.

Article 34 Township enterprises shall use trademarks in accordance with law and cherish their own reputation; they shall print trademarks for the commodities they produce in accordance with State regulations, and they shall not forge the place of origin or forge or falsely use the name and address of a factory of another producer, as well as authentication marks and famous-and-excellent product marks of another producer.

Article 35 Township enterprises must abide by laws and regulations regarding environmental protection and, in adherence to the industrial policy of the State and under the unified guidance of the local people's governments, take measures to make themselves enterprises that discharge little



or no pollution and consume less resources, in order to prevent and control environmental pollution and ecological disruption and to protect and improve the environment.

Local people's governments shall formulate and implement the plans of township enterprises for protecting the environment, thus increasing their ability to prevent and control pollution.

Article 36 If a township enterprise undertakes a construction project that will have an impact on the environment, it must strictly apply the evaluation system governing impact on the environment.

Installations for preventing or controlling pollution embraced in the construction project that is undertaken by a township enterprise must be designed, constructed and put into operation or use simultaneously with the main part of the project. The project shall not be put into operation or use until the installations for preventing or controlling pollution have been examined and accepted by the administrative department for environmental protection.

No township enterprises may adopt or make use of production techniques and equipment formally prohibited by the State for they cause serious environmental pollution; and they may not manufacture or market products formally prohibited by the State for they seriously pollute the environment. Those township enterprises that discharge pollutants in excess of the standard set by the State or local authorities and thus seriously pollute the environment shall bring the pollution under control within a time limit; those that fail to do so within the time limit shall close down, suspend production or change the line of production.

Article 37 Township enterprises must abide by laws and regulations regarding occupational protection and safety, conscientiously carrying out the principle of putting safety and prevention first, adopting effective technical and managerial measures for occupational health and preventing the occurrence of casualties in production and occupational diseases; and they shall remove the hidden elements of accidents that may endanger the safety of employees within a time limit or suspend production for rectification. Managers are strictly forbidden to give instructions against rules and regulations or compel employees to work at risk. Once casualties occur, they shall take emergency rescue measures, make proper arrangements for the victims according to law, and report the matter to the departments concerned.

Article 38 Whoever, in violation of this Law, commits any of the following acts shall be ordered to put it right by the administrative department of the people's government at or above the county level that is in charge of township enterprises:

- (1) altering ownership of a township enterprise in violation of law;
- (2) taking into his possession or using without compensation the property of a township enterprise in violation of law;
- (3) removing or replacing the leading members of a township enterprise in violation of law; or
- (4) encroaching on the right of a township enterprise to independent management.

If any of the said acts causes economic losses to a township enterprise, compensation shall be made in accordance with law.

Article 39 Township enterprises shall have the right to accuse or report against any units or individuals that collect charges from, apportion expenses among or impose fines on them in violation of law to the administrative departments for audit, supervision, finance, price control and township enterprises. The department concerned and the organ at higher levels shall order the persons who are responsible for the violation to desist and return the money within a time limit. And the departments concerned may, in light of seriousness of the violation, impose appropriate sanctions on the persons who are directly responsible for the violation.

Article 40 Before they put it right, township enterprises that violate laws or regulations of the State regarding product quality, environmental protection, land administration, development of natural resources, occupational safety, taxation, etc. shall, in light of seriousness of the violation, be deprived of part or all of the preferential treatment they have enjoyed in accordance with this Law, in addition to sanctions imposed pursuant to relevant laws and regulations.

Article 41 Township enterprises that, in violation of this Law, refuse to undertake the obligations in support of agriculture, shall be ordered to put it right by the administrative department for township enterprises and may, before they put it right, be deprived of part or all of the preferential treatment that they have enjoyed according to this Law.

Article 42 If a party is not satisfied with the handling done or sanctions imposed according to the provisions from Article 38 through Article 41 of this Law, it may apply for administrative reconsideration or bring a lawsuit in accordance with law.

Article 43 This Law shall go into effect as of January 1, 1997.

# **Law of the People's Republic of China on Specialized Farmers Cooperatives**

Adopted at the 24th Meeting of the Standing Committee of the Tenth National People's Congress  
on October 31, 2006

## Contents

Chapter I General Provisions

Chapter II Establishment and Registration

Chapter III Membership

Chapter IV Organizational Structure

Chapter V Financial Management

Chapter VI Merger, Division, Dissolution and Liquidation

Chapter VII Supportive Policies

Chapter VIII Legal Responsibility

Chapter IX Supplementary Provisions

## Chapter I General Provisions

Article 1 This Law is enacted for the purpose of supporting and guiding the development of specialized farmers cooperatives, regulating their organization and behavior and protecting their lawful rights and interests and those of their members', and promoting the development of agriculture and of the economy of rural areas.

Article 2 Specialized farmers cooperatives are mutual-help economic organizations joined voluntarily and managed in a democratic manner by the producers and operators of the same kind of farm products or by the providers or users of services for the same kind of agricultural production and operation.

Specialized farmers cooperatives mainly serve their members, offering such services as purchasing the means of agricultural production, marketing, processing, transporting and storing farm products, and providing technologies and information related to agricultural production and operation.

Article 3 Specialized farmers cooperatives shall observe the following principles:

- (1) Their members are mainly farmers;
- (2) They aim to serve their members, working for the common interests of all the members;
- (3) The members join the cooperatives voluntarily and are free to withdraw from them;
- (4) The members are equal in status and democratic management is practiced; and
- (5) Profits are to be distributed mainly in proportion on the volume (amount) of the transactions effected between the cooperatives and their members.

Article 4 Specialized farmers cooperatives shall be registered according to this Law to obtain the status of a legal person.

Specialized farmers cooperatives shall enjoy the rights to possess, use and dispose of their property which includes capital contributions by their members, common reserve funds, subsidies received directly from the government, donations and other legitimately acquired assets, and shall be liable for their debts with the aforementioned property.

Article 5 Members of specialized farmers cooperatives shall be accountable to their cooperatives within the limits of the capital contributions recorded in their accounts and of their shares of the common reserve funds.

Article 6 The State protects the lawful rights and interests of the specialized farmers cooperatives and their members, and no units or individuals may infringe upon such rights and interests.

Article 7 In production and operation, specialized farmers cooperatives shall obey the relevant laws and administrative regulations, observe social and business ethics, and act in good faith.

Article 8 The State promotes the development of specialized farmers cooperatives through such measures as government financing, preferential taxation, support in fund raising, science and technology as well as human resources, and guidance through industrial policies.

The State encourages and supports all social sectors to provide services to specialized farmers cooperatives.

Article 9 People's governments at or above the county level shall make arrangements for the administrative departments of agriculture and the relevant departments and organizations to provide guidance, support and services to the formation and development of specialized farmers cooperatives, in accordance with this Law and within the limits of their respective duties.

## Chapter II Establishment and Registration

Article 10 For establishment of a specialized farmers cooperative, the following conditions shall be met:

- (1) having five or more members who meet the requirements as are prescribed in Articles 14 and 15 of this Law;
- (2) having a charter that meets the requirements as are prescribed by this Law;
- (3) having an organizational structure that meets the requirements as are prescribed by this Law;
- (4) having a name which is in conformity with the provisions of relevant laws and administrative regulations and a domicile as specified in the charter; and
- (5) having capital contributions made by members who meet the requirements as are specified in the charter.

Article 11 For establishment of a specialized farmers cooperative, an assembly shall be convened with the participation of all of the founders. Persons who voluntarily become members of the cooperative at the time of its establishment are founders.

The founders' assembly shall exercise the following functions and powers:

- (1) to adopt the charter of the cooperative, which is required to be adopted unanimously by all of the founders;
- (2) to elect the director-general, directors, the executive supervisor or members of the board of supervisors; and
- (3) to examine and discuss other major issues.

Article 12 In the charter of a specialized farmers cooperative shall clearly be specified the following matters:

- (1) its name and domicile;
- (2) scope of business;
- (3) membership qualifications, joining and withdrawing from the cooperative, as well as expelling a member;
- (4) rights and duties of members;
- (5) structure of the organization, measures for its formation, its functions and powers, term of office and the rules of procedure;
- (6) forms and amounts of capital contributions to be made by members;
- (7) financial management, distribution of profits and disposition of losses;
- (8) procedures for modification of the charter;
- (9) causes of dissolution and measures for liquidation;
- (10) the items for announcement and the manners of announcement; and

(11) other matters that need to be specified.

Article 13 For establishment of a specialized farmers cooperative, the following documents shall be submitted to the administrative department for industry and commerce to apply for registration:

- (1) letter of application for registration;
- (2) minutes of the establishment assembly signed and sealed by all of the founders;
- (3) charter signed and sealed by all of the founders;
- (4) letters of appointment and identity certifications of the legal representative and of the directors;
- (5) list of capital contributions signed and sealed by the members who make such contributions;
- (6) certification for use of the domicile; and
- (7) other documents as prescribed by relevant laws and administrative regulations.

The registration authority shall complete the registration procedure within 20 days from the date it accepts the application for registration and shall issue a business license to the applicant that meets the conditions for registration.

Where a specialized farmers cooperative intends to alter the statutory items for registration, it shall submit an application for the purpose.

The measures for registration of specialized farmers cooperatives shall be formulated by the State Council. No charges may be collected for registration.

### Chapter III Membership

Article 14 Citizen who have the capacity for civil conduct and enterprises, public institutions and organizations that are engaged in production and operation which are directly related to the business of a specialized farmers cooperative may become members of the cooperative, provided that they can make use of the services offered by the cooperative, recognizes and abides by the charter of the cooperative and complete the formalities for joining the cooperative as prescribed in the charter. However, a unit that exercises the function of administering public affairs shall not join such cooperative.

A specialized farmers cooperative shall have a membership roll and file it with the registration authority.

Article 15 Farmers shall account for at least 80 percent of the membership of a specialized farmers cooperative.

If the total number of members of a cooperative is 20 or less, there may be one enterprise, public institution or organization as its member; if the number exceeds 20, the number of enterprises, public institutions or organizations shall not exceed five percent of the total number.

Article 16 A member of a specialized farmers cooperative shall enjoy the following rights:

- (1) to attend the membership assembly, have the rights to vote, to elect and to stand for election, and exercise democratic management of the cooperative according to the stipulations in the charter;
- (2) to make use of the services and production and operation facilities provided by the cooperative;
- (3) to share profits according to the stipulations in the charter or the resolution of the membership assembly;
- (4) to consult the charter, membership roll, minutes of the membership assembly or of the conference of members' representatives, resolutions of the board of directors and of the board of supervisors, and financial statements and account books; and
- (5) other rights as are stipulated in the charter.

Article 17 The system of "one person, one vote" shall be adopted for election and voting at the membership assembly of a specialized farmers cooperative, and each member shall have the right to one basic vote.

Members who make considerably large capital contributions or who effect considerably large amounts (volumes) of transactions with the cooperative may, according to the stipulations of the charter, enjoy the right to extra votes. The total number of extra votes of the cooperative shall not exceed 20 percent of the total number of the members' basic votes. Each time a membership assembly is convened, the members present at the assembly shall be informed of those members who enjoy the right to extra votes and the number of extra votes they each enjoy.

In the charter restrictions may be placed on the scope of the extra votes to be cast.

Article 18 A member of a specialized farmers cooperative shall be charged with the following duties:

- (1) to execute the resolutions of the membership assembly, the conference of members' representatives and the board of directors;
- (2) to make capital contributions to the cooperative as stipulated in the charter;
- (3) to effect transactions with the cooperative as stipulated in the charter;
- (4) to share losses as stipulated in the charter; and
- (5) other duties as stipulated in the charter.

Article 19 If a member of a specialized farmers cooperative intends to withdraw from the cooperative, he shall submit a request to the director-general or the board of directors three months prior to the end of the fiscal year; and if an enterprise, public institution or organization

intend to withdraw from the cooperative as a member, it shall do so six months prior to the end of the fiscal year; if the charter stipulates otherwise, the stipulations there shall prevail. The membership qualifications of such member shall be terminated at the end of the fiscal year.

Article 20 A member shall continue performing the contract concluded with the specialized farmers cooperative before the termination of his membership, unless otherwise stipulated in the charter or otherwise agreed upon by him and the cooperative.

Article 21 At the termination of the membership, the cooperative shall, in the manners and within the time limit as are stipulated in the charter, return to the member the amount of the capital contributions recorded in his account and his shares of the common reserve funds; and it shall, according to the provisions in the second subparagraph of Article 37 of this Law, return to him the distributable profits earned by the cooperative prior to the termination of his membership qualifications.

The member whose membership qualifications are terminated shall, according to the stipulations in the charter, share the losses and debts incurred by the cooperative prior to the termination of his qualifications.

#### Chapter IV Organizational Structure

Article 22 The membership assembly of a specialized farmers cooperative shall be composed of all of the members. It is the organ of power of the cooperative and shall exercise the following functions and powers:

- (1) to modify the charter;
- (2) to elect and remove the director-general, directors, the executive supervisor or members of the board of supervisors;
- (3) to decide on disposition of major assets, external investment, providing guarantee to entities and individuals outside the cooperative, and other major issues in respect of production and operation;
- (4) to grant approval of the annual business report, and the plans for distribution of profits and for disposition of losses;
- (5) to make a resolution on merger, division, dissolution or liquidation of the cooperative;
- (6) to decide on the number of managers for business operation and technicians to be employed and their qualifications and terms of office;
- (7) to hear reports on the change of membership delivered by the director-general or board of directors; and
- (8) other functions and powers specified in the charter.



Article 23 When a specialized farmers cooperative holds its membership assembly, the number of persons present shall be two-thirds or more of its membership.

The outcome of an election held or the resolution made at a membership assembly shall be deemed to be effective if it is adopted by more than half of the total votes of the members of the cooperative; for a resolution on modifying the charter or on merger, division or dissolution of the cooperative to be adopted, two-thirds or more of the total votes of the members of the cooperative is required. If the charter requires a greater number of votes on such matters, the stipulations there shall prevail.

Article 24 Membership assembly of a specialized farmers cooperative shall be held at least once every year, and convening of the assembly shall be stipulated in the charter. A special membership assembly shall be held within 20 day under one of the following circumstances:

- (1) It is proposed by 30 percent or more of the members;
- (2) It is proposed by the executive supervisor or the board of supervisors; or
- (3) Other circumstances as stipulated in the charter.

Article 25 Where the number of members of a specialized farmers cooperative exceeds 150, a conference of members' representatives may be organized according to the stipulations of the charter, which may, according to the stipulations of the charter, exercise part or all of the functions and powers of the membership assembly.

Article 26 In a specialized farmers cooperative there shall be a director-general, and a board of directors may be set up. The director-general shall be the legal representative of the cooperative.

In a specialized farmers cooperative there may be an executive supervisor or a board of supervisors. The director-general, director, manager, the book-keeper or accountant shall not concurrently hold the office of the supervisor.

The director-general, director, the executive supervisor or members of the board of supervisors shall be elected at the membership assembly from among the members of the cooperative, and they shall exercise their functions and powers according to the provisions prescribed in this Law and the charter and shall be accountable to the membership assembly.

The system of "one person, one vote" shall be applied to voting at the meetings of the board of directors and the board of supervisors.

Article 27 Decisions made on the matters discussed at the meetings of the membership assembly, the board of directors and the board of supervisors of a specialized farmers cooperative shall be recorded in the minutes, which shall be signed by the members of the assembly, directors and supervisors present at the meetings.

Article 28 The director-general or the board of directors of a specialized farmers cooperative may employ managers, book-keepers and accountants according to the decision made at the membership assembly, and the director-general or director may concurrently hold the office of a

manager. A manager may, according to the stipulations of the charter or the decision of the board of directors, employ other staff members.

A manager shall be responsible for the specific production and operation as stipulated in the charter or as authorized by the director-general or the board of directors.

Article 29 The director-general, director or manager of a specialized farmers cooperative shall not do any of the following:

- (1) illegally taking into his own possession, misappropriating or illegally sharing the assets of the cooperative;
- (2) in violation of the stipulations of the charter or without permission of the membership assembly, loaning to another person the funds of the cooperative or providing guarantee to another person with the assets of the cooperative;
- (3) taking into his own possession the commissions charged for transactions effected between another person and the cooperative; or
- (4) engaging in other activities jeopardizing the economic benefits of the cooperative.

Any incomes derived by the director-general, director or manager in violation of the provisions in the preceding paragraph shall belong to the cooperative; if any losses are caused to the cooperative, he shall be liable for compensation.

Article 30 The director-general, director or manager of a specialized farmers cooperative shall not concurrently hold the office of the director-general, director, supervisor or manager in another specialized farmers cooperative that is engaged in the same nature of business as is the said cooperative.

Article 31 A person who handles official business concerning specialized farmers cooperatives shall not concurrently hold the office of the director-general, director, supervisor, manager, book-keeper or accountant in such a cooperative.

## Chapter V Financial Management

Article 32 The department of finance under the State Council shall establish a financial and accounting system for the specialized farmers cooperatives in accordance with relevant laws and administrative regulations of the State. The specialized farmers cooperatives shall carry out their accounting according to the said financial and accounting system.

Article 33 The director-general or the board of directors of a specialized farmers cooperative shall, according to the stipulations in the charter, organize efforts to prepare the annual business report, plans for profit distribution and for disposition of losses, and financial statements, and shall, 15

days prior to the convening of the membership assembly, make them available in the office for the members to consult.

Article 34 Accounting for the transactions effected between a specialized farmers cooperative and its members shall be separated from the ones effected between the cooperative and the non-members that make use of the services provided by the cooperative.

Article 35 A specialized farmers cooperative may draw common reserve funds from the profits of the year in accordance with the stipulations in the charter or the decision made by the membership assembly. The common reserve funds shall be used for making up for losses, expanding production and operation or be converted into members' capital contributions.

The common reserve funds drawn every year shall be quantified as shares of each member according to the stipulations of the charter.

Article 36 A specialized farmers cooperative shall start an account for each member, in which shall mainly be recorded the following:

- (1) the amount of capital contributions of the member;
- (2) the quantified common reserve funds as shares of the member; and
- (3) the volume (amount) of transactions effected between the member and the cooperative.

Article 37 The profits of the year left after the losses are made up for and the common reserve funds are drawn shall be the distributable profits of a specialized farmers cooperative.

The distributable profits shall be returned or distributed to the members according to the following provisions, and the specific measures for distribution shall be decided according to the stipulations in the charter or the resolution of the membership assembly:

- (1) to return the profits in proportion to the volume (amount) of the transactions effected between the members and the cooperative, and the total amount returned shall not be less than 60 percent of the distributable profits; and
- (2) to distribute pro rata to the members of the cooperative the rest of the profits left after the return according to the provisions in the preceding subparagraph, on the basis of the capital contributions and shares of common reserve funds recorded in the members' accounts and the members' average quantified shares of the assets accumulated from subsidies directly given by the government and donations made by other persons to the cooperative.

Article 38 Where there is an executive supervisor or a board of supervisors in a specialized farmers cooperative, the executive supervisor or the board of supervisors shall be responsible for the internal financial auditing of the cooperative and shall report the auditing results to the membership assembly.

The membership assembly may also entrust an auditing body with the financial auditing of the cooperative.

## Chapter VI Merger, Division, Dissolution and Liquidation

Article 39 Where a specialized farmers cooperative intends to merge with another cooperative, it shall inform its creditors of the matter within 10 days from the date the resolution is made to such an effect. The credits and debts of the merged parties shall be succeeded by the surviving or newly established entity after the merger.

Article 40 Where a specialized farmers cooperative intends to be divided, it shall have its assets divided accordingly, and shall inform its creditors of the matter within 10 days from the date the resolution on division is made. The entities after the division shall bear joint and several liability for the debts of the cooperative incurred prior to the division, except that the written agreement on payment of the debts it concluded with the creditors prior to the division stipulates otherwise.

Article 41 A specialized farmers cooperative shall be dissolved for one of the following reasons:

- (1) The causes for dissolution stipulated in the charter arise;
- (2) A resolution on dissolution is made by the membership assembly;
- (3) Dissolution is necessary because of merger or division; or
- (4) Its business license is revoked or its registration is cancelled according to law.

Where a cooperative is dissolved due to the reasons as specified in subparagraph (1), (2) or (4) of the preceding paragraph, a liquidation team composed of the members of the cooperative who are elected by the membership assembly shall be formed within 15 days from the date a cause for dissolution arises, in order to initiate liquidation for dissolution. If a liquidation team cannot be formed at the expiration of the time limit, members and creditors of the cooperative may apply to a people's court for designating members to form a team for liquidation, and the people's court shall accept such an application and in a timely manner, designate members to form a liquidation team. Article 42 A liquidation team shall, from the date it is formed, take over the specialized farmers cooperative, and it shall be responsible for disposing of the outstanding businesses which are related to the liquidation, straightening out the assets, credits and debts, distributing the assets left after the debts are repaid, participating in litigation, arbitration or other legal proceedings on behalf of the cooperative and, at the end of the liquidation, handle the formalities for canceling registration.

Article 43 A liquidation team shall, within 10 days from the date it is formed, notify the members and creditors of the specialized farmers cooperative of its formation and announce the matter in newspapers within 60 days. The creditors shall, within 30 days from the date they receive the notification, or for those who fail to receive such notification, within 45 days from the date the announcement is made, declare their claims to the liquidation team. If all the members and creditors receive the notification within the prescribed time limit, the liquidation team shall be absolved from the obligation to make an announcement.

When declaring their claims, the creditors shall explain the matters concerned and provide the certifying documents. The liquidation team shall keep a record of the claims.

During the period of declaration of claims, the liquidation team shall not pay back any debts to the creditors.

Article 44 When a specialized farmers cooperative is dissolved due to the causes specified in the first paragraph in Article 41 of this Law, or when its application for bankruptcy is being processed by a people's court, it shall not handle any formalities for any member to withdraw from the cooperative. Article 45 The liquidation team shall be responsible for drawing up liquidation plans for paying off the salaries and social insurance premiums of the employees of the cooperative, the taxes in arrears and other debts and for distributing the remaining assets, and shall execute the plans after they are adopted by the membership assembly, or confirmed by the people's court upon the team's application.

If the liquidation team discovers that the assets of the specialized farmers cooperative is insufficient to pay off the debts, it shall apply for bankruptcy to a people's court according to law.

Article 46 When a specialized farmers cooperative is being liquidated for dissolution or bankruptcy, the subsidiaries it directly received from the government which form part of its property shall not be distributed to the members of the cooperative as distributable surplus property, and the measures for disposing of such assets shall be formulated by the State Council.

Article 47 Members of a liquidation team shall be devoted to their duty and perform their duty of liquidation according to law, and they shall be liable for compensation if they intentionally cause losses to the members or creditors of a specialized farmers cooperative or do so through gross negligence.

Article 48 The relevant provisions of the Enterprise Bankruptcy Law shall be applicable to the specialized farmers cooperatives that go bankrupt. However, after the bankruptcy assets are used for paying off the expenses for bankruptcy proceedings and the debts incurred for the common good of creditors, priority shall be given to settling the outstanding accounts resulted from transactions with the farmer members of the cooperatives effected prior to bankruptcy.

## Chapter VII Supportive Policies

Article 49 The State supports the construction projects for developing agriculture and the rural economy, and the relevant competent specialized farmers cooperatives may be entrusted with or assigned such tasks.

Article 50 The Central and local governments shall respectively allot funds to support the specialized farmers cooperatives in providing services in respect of information, training, quality standards for farm products and their authentication, construction of infrastructure for agricultural production, marketing, technology dissemination, etc. Priority shall be given to the specialized

farmers cooperatives in ethnic areas, outlying areas and poverty-stricken areas and to the ones engaging in the production of major farm products which are urgently needed by the State and the society.

Article 51 The policy-oriented financial institutions of the State shall adopt diversified means to provide funds through various channels in support of the specialized farmers cooperatives. The specific supportive policies shall be formulated by the State Council.

The State encourages the commercial financial institutions to provide financial services to the specialized farmers cooperatives by diversified means.

Article 52 The specialized farmers cooperatives shall enjoy preferential treatment in taxation prescribed by the State in respect of agricultural production, processing, circulation and services and other economic activities involving agriculture.

Other preferential taxation policies in support of the development of specialized farmers cooperatives shall be formulated by the State Council.

## Chapter VIII Legal Responsibility

Article 53 A person who illegally takes into his own possession, misappropriates, withholds, illegally shares or by other means infringes on the lawful property of a specialized farmers cooperative or its members, illegally intervenes with the production and operation of such cooperative or its members, apportions expenses or tasks to the cooperative or its members, or compels the cooperative or its members to accept paid services, thus causing financial losses to the cooperative, shall be investigated for legal responsibility according to law.

Article 54 Where a specialized farmers cooperative provides false materials for registration to the relevant registration authority or gets registered by other deceptive means, it shall be ordered by the registration authority to rectify; and if the circumstances are serious, its registration shall be canceled. Article 55 Where a specialized farmers cooperative makes false entries or conceals important facts in such materials as financial statements submitted in accordance with law to the relevant department in charge, it shall be investigated for legal responsibility according to law.

## Chapter VX Supplementary Provisions

Article 56 This Law shall go into effect as of July 1, 2007.

## **Insurance Law of the People's Republic of China**

Adopted at the 14th Meeting of the Standing Committee of the Eighth National People's Congress on June 30, 1995, revised in accordance with the Decision on Amending the Insurance Law of the People's Republic of China adopted at the 30th Meeting of the Standing Committee of the Ninth National People's Congress on October 28, 2002, and revised at the 7th Meeting of the Standing Committee of the Eleventh National People's Congress on February 28, 2009

### Contents

Chapter 1 General Provisions

Chapter 2 Insurance Contracts

Section 1 General Provisions

Section 2 Insurance of Person Contracts

Section 3 Property Insurance Contracts

Chapter 3 Insurance Companies

Chapter 4 Rules Governing Insurance Operations

Chapter 5 Insurance Agents and Brokers

Chapter 6 Supervision and Administration of the Insurance Industry

Chapter 7 Legal Liability

Chapter 8 Supplementary Provisions

### Chapter I General Provisions

Article 1 This Law is formulated for the purposes of regulating insurance activities, protecting the legal rights and interests of the parties involved, strengthening supervision and administration over the insurance industry, safeguarding social and economic order and public interests, and promoting sound development of insurance operations.

Article 2 For the purposes of this Law, "insurance" refers to commercial insurance whereby a policy holder, in accordance with the contract, pays insurance premiums to the insurer, and the insurer bears an obligation to pay the policy holder indemnities against property loss caused by the occurrence of a contingent event as agreed upon in the contract, or pay insurance benefits

when the insured dies, is injured or disabled, suffers illness or reaches the age limit, time limit or any other condition agreed upon in the contract.

Article 3 Insurance activities conducted within the territory of the People's Republic of China shall be governed by this Law.

Article 4 Insurance activities shall be conducted in compliance with laws and administrative regulations, with respect for public morality and without jeopardizing public interests.

Article 5 In exercising their rights and performing their obligations, the parties to insurance activities shall follow the principle of good faith.

Article 6 Insurance business shall be conducted by insurance companies established in accordance with this Law or by other insurance organizations as prescribed by laws and administrative regulations. No other entities or individuals may operate an insurance business.

Article 7 Any legal persons or other organizations within the territory of the People's Republic of China that need insurance coverage within the People's Republic of China shall, for the purpose thereof, apply to insurance companies established within the territory of the People's Republic of China.

Article 8 The insurance industry shall be operated and administered separately from the banking, securities and trust industries, and insurance companies shall be established separately from banking, securities and trust institutions, unless otherwise stipulated by the State.

Article 9 The insurance regulatory authority under the State Council shall be responsible for the supervision and administration of the insurance industry in accordance with the law. The insurance regulatory authority under the State Council shall set up dispatch offices in accordance with its needs for performing duties. The dispatch offices shall perform the duties of supervision and administration as authorized by the insurance regulatory authority under the State Council.

## Chapter II Insurance Contracts

### Section 1 General Provisions

Article 10 An insurance contract is an agreement whereby the rights and obligations pertaining to insurance are specified and agreed by the policy holder and the insurer.

A policy holder is a party who enters into an insurance contract with an insurer and is obligated to pay premiums under the insurance contract. An insurer means an insurance company which enters into an insurance contract with a policy holder and is obligated to pay indemnity or insurance benefits under the insurance contract.



Article 11 An insurance contract shall be concluded by agreement upon negotiation, and the rights and obligations of both parties shall be determined according to the principle of fairness. An insurance contract shall be concluded out of free will, unless the insurance is mandated by laws or administrative regulations.

Article 12 An insurance of person policy holder shall have an insurable interest in the insured at the time the insurance contract is formed.

The insured in property insurance shall have an insurable interest in the object insured at the time an incident covered by the insurance occurs.

Insurance of person is a type of insurance which takes the life and body of human beings as the object of insurance.

Property insurance is a type of insurance which takes property and interests related thereto as the object of insurance.

“The insured” means a person whose property, life or body is covered by an insurance contract and who is entitled to claim insurance benefits. A policy holder may be the insured.

Insurable interest refers to a legally recognized interest of the policy holder or the insured in the object insured.

Article 13 An insurance contract is formed when a policy holder applies for insurance and the insurer accepts the application. The insurer shall issue to the policy holder an insurance policy or any other insurance certificate in a timely manner.

An insurance policy or any other insurance certificate shall indicate the contractual content as agreed upon by both parties. Both parties may agree to adopt any other written form specifying the contractual content. A legally formed insurance contract shall become effective upon its formation. The policy holder and insurer may attach conditions or a time limit on the effectiveness of the contract.

Article 14 Once an insurance contract is formed, the policy holder shall pay the premiums in accordance with the terms of the contract, and the insurer shall begin to undertake the insurance liability from the time agreed upon.

Article 15 Unless otherwise stipulated in this Law or agreed upon in the insurance contract, the policy holder may, but the insurer shall not, rescind the contract after it is formed.

Article 16 In concluding an insurance contract, the policy holder shall make an honest disclosure when the insurer inquires about the object insured or relevant circumstances concerning the insured.

The insurer shall have the right to rescind the insurance contract if the policy holder fails to perform his or her obligation of making an honest disclosure intentionally or out of gross negligence, thereby materially affecting the insurer making a decision whether or not to provide the insurance or whether or not to increase the premium rate.

The right to rescind an insurance contract as prescribed in the preceding paragraph shall be annulled after 30 days or more from the day when the insurer gains knowledge of the cause of rescission. After two years or more from the day when an insurance contract is entered into, the insurer shall not rescind the contract. Where an incident covered by insurance occurs, the insurer shall bear the obligation for paying indemnities or insurance benefits.

If a policy holder intentionally fails to perform his or her obligation of making an honest disclosure, the insurer shall bear no obligation for paying indemnities or insurance benefits as regards the incident covered by insurance occurring prior to the rescission of the contract, or for returning the premiums paid.

If a policy holder fails to perform his or her obligation of making an honest disclosure out of gross negligence, which has a material effect on the occurrence of an incident covered by insurance, the insurer shall, with respect to the incidents occurring prior to the rescission of the contract, bear no obligation for indemnification or payment of insurance benefits but shall return the premiums paid.

Where an insurer, knowing the truth that the policy holder fails to tell, enters into an insurance contract with the policy holder, the insurer shall not rescind the contract. If an incident covered by insurance occurs, the insurer shall bear the obligation for indemnification or payment of insurance benefits.

An incident covered by insurance means an event falling within the scope of the insurance liability under an insurance contract.

Article 17 Where an insurance contract is concluded by using the standard clauses provided by the insurer, the insurer shall provide an insurance policy with the standard clauses attached and explain the contents of the contract to the policy holder.

For those clauses that exempt the insurer from liability in the insurance contract, the insurer shall make sufficient warning to the policy holder of those clauses in the insurance application form, the insurance policy or any other insurance certificate, and expressly explain the contents of those clauses to the policy holder in writing or orally. If the insurer fails to make a warning or explicit explanation thereof, those clauses shall not be effective.

Article 18 An insurance contract shall contain the following items:

- (1) Name and address of the insurer;
- (2) Names and addresses of the policy holder and the insured, and name and address of the beneficiary in case of insurance of person;
- (3) Object insured;
- (4) Insurance liability and liability exemption;
- (5) Period of insurance and commencement of insurance liability;
- (6) Amount insured;

- (7) Premium and payment method;
- (8) Method for paying indemnities or insurance benefits;
- (9) Liabilities for breach of contract and resolution of disputes; and
- (10) Day, month and year of the conclusion of the contract.

The policy holder and the insurer may agree upon other items related to insurance in the insurance contract.

A beneficiary refers to a person who, as designated by the insured or the policy holder of insurance of person, is entitled to make an insurance claim. The policy holder or the insured may be a beneficiary.

The amount insured refers to the maximum amount of indemnity or insurance benefits which the insurer is liable to pay.

Article 19 Any of the following clauses in the standard clauses of an insurance contract provided by the insurer shall be void:

- (1) Clauses exempting the insurer from any legal obligation or aggravating liability of the policy holder or insured; and
- (2) Clauses excluding any legal right of the policy holder, insured or beneficiary.

Article 20 The policy holder and the insurer may amend the contents of the insurance contract subject to mutual agreement.

Where amendments to the insurance contract are made, the insurer shall endorse them in the original policy or other insurance certificates or affix an endorsement slip thereto, or the policy holder and insurer shall conclude a written agreement of amendment.

Article 21 The policy holder, the insured or the beneficiary shall, in a timely manner, notify the insurer after being aware of the occurrence of an incident covered by insurance. Where a policy holder, insured or beneficiary fails to notify the insurer in a timely manner intentionally or out of gross negligence, making it difficult to ascertain the nature, cause, extent of the loss, etc., of the incident covered by insurance, the insurer shall not be liable for indemnification or payment of insurance benefits for the undeterminable part, unless the insurer already knows or should have known about the incident in a timely manner through other channels.

Article 22 Where a claim for indemnity or payment of insurance benefits is lodged with the insurer after the occurrence of the incident covered by insurance, the policy holder, the insured or the beneficiary shall, to the best of his or her ability, provide the insurer with evidence and other materials relevant to ascertaining the nature, cause and extent of the loss.

Based on the provisions of the insurance contract, the insurer, in considering the relevant evidence or other material incomplete, shall notify the policy holder, the insured or the beneficiary once, asking them to provide supplementary evidence or other materials in a timely manner.

Article 23 The insurer shall, after receiving a claim for indemnity or payment of insurance benefits from the insured or the beneficiary, determine the matter without delay. If the circumstances are complex, the insurer shall determine the matter within 30 days, unless the insurance contract provides otherwise. The insurer shall inform the insured or the beneficiary of the outcome. If responsibility lies with the insurer, the insurer shall fulfill its obligation for such indemnity or payment within 10 days after an agreement is reached with the insured or the beneficiary. If there are stipulations in the insurance contract on the period within which indemnification or payment should be made, then the insurer shall fulfill its obligation accordingly.

If the insurer fails to fulfill its obligations as prescribed in the preceding paragraph in a timely manner, then, in addition to paying the insurance benefits, the insurer shall compensate the insured or the beneficiary for any damage incurred thereby.

No entity or individual may illegally interfere with the insurer's fulfillment of its obligation for indemnification or payment of the insurance benefits, or restrict the right of the insured or the beneficiary to receive such payments.

Article 24 After assessing a claim in accordance with Article 23 of this Law, for events not covered by insurance, the insurer shall, within three days from the date such assessment is made, send to the insured or the beneficiary a notice refusing to pay indemnities or insurance benefits and shall explain the reasons for such a decision.

Article 25 If the amount of indemnity or payment of insurance benefits cannot be determined within 60 days upon receipt of a claim for indemnity or payment of insurance benefits, together with relevant evidence and information in respect thereof, the insurer shall first effect primary payment which can be determined by the evidence and materials in hand. The insurer shall accordingly pay the balance after the amount of indemnity or payment of insurance benefits is finally determined.

Article 26 With respect to insurance other than life insurance, the period of limitation of action for an insured or beneficiary to claim indemnification or payment of the insurance benefits against the insurer shall be two years, which shall be counted from the day when the insured or beneficiary learns of or should have gained knowledge of the occurrence of the incident covered by insurance. With respect to life insurance, the period of limitation of action for an insured or beneficiary to claim for payment of insurance benefits shall be five years, which shall be counted from the day the insured or beneficiary learns of or should have gained knowledge of the occurrence of the incident covered by insurance.

Article 27 The insurer is entitled to terminate the insurance contract and not to refund the premiums where the insured or the beneficiary falsely claims that an incident covered by insurance has occurred, and submits a claim for indemnity or payment of insurance benefits.

If the policy holder or the insured intentionally fabricates an incident covered by insurance, the insurer is entitled to terminate the insurance contract, to refuse to bear obligation for indemnification or payment of insurance benefits and, except as otherwise provided in Article 43 of this Law, to refuse to refund the premiums.

If the policy holder, the insured or the beneficiary, following the occurrence of an incident covered by insurance, fabricates the cause of such incident, or exaggerates the extent of loss with forged or altered relevant evidence, information or other proofs, the insurer shall bear no obligation for indemnity or payment of insurance benefits for the portion which is fabricated or exaggerated.

The policy holder, the insured or the beneficiary shall refund insurance benefits or compensate the insurer for expenses incurred as a result of committing any of the acts stipulated in the foregoing three paragraphs of this Article.

Article 28 Reinsurance is when an insurer insures part of its underwritten policies with another insurer.

At the request of the reinsurer, the cedant shall inform the reinsurer in written form of its own liability and the relevant information on the original insurance.

Article 29 The reinsurer shall not demand payment of premiums by the policy holder of the original insurance.

The insured or the beneficiary of the original insurance shall not lodge claims with the reinsurer for indemnity or payment of insurance benefits. The cedant shall not refuse or delay to fulfill its own original obligations with the excuse that the reinsurer fails to perform the reinsurance liability.

Article 30 Where the insurer and policy holder, insured or beneficiary have a dispute over a clause of an insurance contract concluded by using the standard clauses provided by the insurer, the clause shall be interpreted as commonly understood. If there are two or more different interpretations of the clause, the people's court or the arbitration institution shall interpret the clause in favor of the insured and beneficiary.

## Section 2 Insurance of Person Contracts

Article 31 A policy holder has insurable interest in the following persons:

- (1) The policy holder himself or herself;
- (2) The policy holder's spouse, children and parents;
- (3) Family members and close relatives other than the aforementioned who foster or support the policy holder; or
- (4) Workers who have a labor relationship with the policy holder.

In addition to the stipulations in the preceding paragraph, the policy holder shall be deemed as having an insurable interest in the insured if the insured consents to the policy holder concluding the contract for him or her.

If the policy holder has no insurable interest in the insured when the contract is concluded, the contract shall be void.

Article 32 If the age of the insured is not correctly given by a policy holder, and the actual age of the insured does not fall within the age limit specified by the contract, the insurer may rescind the contract and refund the cash value of the insurance policy as agreed upon in the contract. An insurer's right to rescind an insurance contract shall be subject to paragraphs 3 and 6 of Article 16 of this Law.

In the event that a policy holder provides the incorrect age of the insured, thus causing him or her to underpay the premiums, the insurer shall have the right to rectify such mistake and demand the policy holder to pay the balance, or when paying insurance benefits, reduce the payment in proportion with the amount of premiums actually paid and the amount that should have been paid.

In the event that a policy holder provides the incorrect age of the insured, thus causing him or her to overpay the premiums, the insurer shall refund the overpaid portion to the policy holder.

Article 33 An applicant shall not apply and the insurer shall not underwrite insurance for a person taking death as a condition for payment of insurance benefits for a person without the capacity for civil conduct. The restriction stipulated in the preceding paragraph does not apply to cases where parents apply for insurance of person for their minor children. However, the total payment for death shall not exceed the limit prescribed by the insurance regulatory authority under the State Council.

Article 34 A contract stipulating death as the term for payment of insurance benefits is not valid unless the insured agrees and approves the amount insured.

An insurance policy signed and issued pursuant to a contract stipulating death as the term for payment of insurance benefits shall not be transferred or pledged without the written consent of the insured.

Where parents apply for insurance of person for their minor children, the restriction stipulated in paragraph one of this Article shall not apply.

Article 35 The policy holder may either pay the whole premium or pay by installments in accordance with the terms of the contract.

Article 36 Where a contract specifies payment of the premium by installments and the policy holder has paid the first installment but fails to pay the current installment despite a lapse of over 30 days from a reminder by the insurer or over 60 days from the scheduled date of payment, the validity of the contract shall be suspended, or the insurer may, in accordance with the terms of the contract, reduce the insured amount, unless stipulated otherwise in the contract.

Where an incident covered by insurance occurs to the insured within the time limit specified in the preceding paragraph, the insurer shall pay insurance benefits according to the contract, but may deduct the underpaid insurance premium from the insurance benefits.

Article 37 The validity of a contract that has been suspended in accordance with Article 36 of this Law can be reinstated upon agreement reached between the insurer and the policy holder through negotiations and after the policy holder makes the outstanding premium payment. However, the

insurer is entitled to rescind the contract if no agreement has been reached by both parties within two years after the day when the validity of the contract is suspended.

Where an insurer rescinds the contract in accordance with the preceding paragraph, the insurer shall refund the cash value of the policy in accordance with the contract.

Article 38 The insurer shall not resort to legal proceedings to demand payment by the policy holder of the premium in the case of insurance of person.

Article 39 The beneficiary of the insurance of person shall be designated by the insured or policy holder.

The designation of a beneficiary by a policy holder shall be subject to consent of the insured. Where a policy holder applies for insurance of person for any worker who has a labor relationship with him or her, the policy holder shall not designate any person other than the insured or the insured's close relative as the beneficiary.

If the insured is a person with no or limited capacity for civil conduct, the beneficiary may be designated by his or her guardian.

Article 40 The insured or policy holder may designate one or more persons as the beneficiary or beneficiaries.

Where there is more than one beneficiary, the insured or the policy holder may specify the beneficial order and beneficiary share. If such proportions have not been defined, all the beneficiaries shall share the insurance benefits equally.

Article 41 The insured or policy holder may change the beneficiary, and shall notify the insurer of the change in writing. The insurer shall endorse the change on the policy or other insurance certificates, or affix an endorsement slip thereto upon receipt of the notice.

The change of a beneficiary by the policy holder shall be subject to the consent of the insured.

Article 42 In the event of the death of the insured, the insurance benefits shall, in any of the following circumstances, be deemed as the estate of the deceased and the insurer shall be obligated to pay insurance benefits in accordance with the Inheritance Law of the People's Republic of China:

- (1) Where there is no designated beneficiary or the beneficiary is not clearly designated and cannot be determined;
- (2) Where the beneficiary dies before the insured without another beneficiary being designated; or
- (3) Where the beneficiary forfeits or surrenders his or her beneficial interests in accordance with the law without any other beneficiary.

Where both the beneficiary and the insured die in the same incident and it is impossible to determine the sequence of death, the beneficiary shall be presumed to have died first.

Article 43 Where a policy holder has intentionally caused the death, disability or illness of the insured, the insurer shall bear no obligation to make the insurance payment. In the event that a

policy holder has paid the premium for two years or more, the insurer shall, in accordance with the contract, return the cash value of the policy to the other entitled beneficiaries.

If a beneficiary has intentionally caused the death, disability or illness of the insured, or attempted to cause the death of the insured, the beneficiary shall be deemed to have forfeited his or her beneficial interests.

Article 44 With respect to a contract regarding the death of the insured as the condition for payment of the insurance benefits, the insurer shall have no obligation to make such payment if the insured commits suicide within two years from the day the contract is concluded or when the validity of the contract resumes, unless the insured is a person without the capacity for civil conduct at the time of suicide.

Where an insurer is exempted from paying insurance benefit in accordance with the preceding paragraph, it shall refund the cash value of the insurance policy as agreed upon in the contract.

Article 45 Where death or disability of the insured results from him or her intentionally committing a crime or resisting compulsory criminal law enforcement measures applied according to the law, the insurer shall have no obligation to pay the insurance benefits. If, however, the policy holder has paid the premium for two years or more, the insurer shall return the cash value of the insurance policy as agreed upon in the contract.

Article 46 Where incidents covered by insurance such as the death, disability or illness of the insured result from the actions of a third party, the insurer shall have no subrogation right against the third party after payment of the insurance benefits to the insured or the beneficiary. However, the insured or the beneficiary shall still have the right to demand compensation from the third party.

Article 47 Where a policy holder rescinds a contract, the insurer shall return the cash value of the policy as agreed upon in the contract within 30 days after receiving the notice of termination.

### Section 3

#### Property Insurance Contracts

Article 48 If the insured does not have an insurable interest in the object insured when an incident covered by insurance occurs, he or she shall not claim insurance benefits against the insurer.

Article 49 Where an object insured is assigned, the assignee shall succeed to the rights and obligations of the insured.

Where the object insured is assigned, the insured or the assignee shall notify the insurer in a timely manner, except in the case of a cargo insurance contract or where the contract specifies otherwise.

If the degree of peril is greatly increased due to the assignment of the object insured, the insurer may, within 30 days upon receipt of the notice mentioned in the preceding paragraph, increase the insurance premium or rescind the contract as agreed upon in the contract. If the insurer rescinds the contract, it shall refund the collected insurance premium to the policy holder after deducting



the receivable part from the day of commencement of insurance liability to the day of contract rescission.

If the insured or assignee fails to notify the insurer as stipulated in the second paragraph of this Article, the insurer shall bear no obligation for indemnification where the occurrence of an incident covered by insurance is caused by the greatly increased risk attending the object insured due to the assignment.

Article 50 A cargo insurance contract or an insurance contract for the carrier's voyage shall not be terminated by the parties thereto subsequent to the commencement of insurance liability.

Article 51 The insured shall observe all provisions of the State pertaining to areas such as fire prevention, safety, production operations and labor protection, to ensure safety of the object insured.

In accordance with the terms of the contract, an insurer may inspect the safety conditions of the object insured and make timely suggestions in writing to the policy holder or the insured so as to eliminate unsafe factors and latent risks.

In the event that a policy holder or the insured fails to fulfill his or her contractual obligations to ensure the safety of the object insured, the insurer has the right to ask for an increase in the premium or rescind the contract.

An insurer may, with the consent of the insured, take preventive measures to ensure the safety of the object insured.

Article 52 If the extent of risk attending the object insured increases during the term of the contract, the insured shall, in accordance with the contract, notify the insurer in a timely manner, and the insurer may ask for an increase in the premium or rescind the contract as agreed in the contract. If the insurer rescinds the contract, it shall refund the collected insurance premium to the policy holder after deducting the receivable part for the period between the date of commencement of cover and the date of rescission of the contract as agreed upon in the contract.

If the insured fails to notify the insurer as stipulated in the preceding paragraph, the insurer shall bear no obligation for indemnification where the occurrence of the incident covered by insurance is caused by the obviously increased risk attending the object insured.

Article 53 Unless otherwise specified in the contract, an insurer shall reduce the premium and refund correspondingly the part thereof calculated on a per diem basis in either of the following cases:

- (1) A change occurs in relative circumstances under which the insurance rate was determined, so that the risk attending the object insured is noticeably reduced; or
- (2) An obvious reduction occurs in the insurable value of the object insured.

Article 54 Where a policy holder requests rescind of a contract prior to commencement of insurance liability, the policy holder shall pay service charges to the insurer as agreed in the contract and the insurer shall then refund the premiums paid. If a policy holder requests rescission

of the contract subsequent to the commencement of insurance liability, the insurer may refund the collected insurance premiums to the policy holder after deducting the receivable part from the day of commencement of insurance liability to the day of contract rescission as agreed upon in the contract.

Article 55 Where a policy holder and an insurer have agreed upon and specified the insurable value of the object insured in the contract, the insurable value as agreed upon in the contract shall be the standard for calculating the indemnity when damage occurs to the object insured.

Where a policy holder and an insurer have not agreed upon the insurable value of the object insured, the actual value of the object insured shall be the standard for calculating the indemnity when damage occurs to the object insured.

The sum insured shall not exceed the insurable value. The part in excess shall be null and void, and the insurer shall refund the corresponding amount of insurance premium to the policy holder.

Where the sum insured is less than the insurable value, the insurer shall bear obligation for indemnity pro rata based on the amount insured and the insurable value, unless otherwise provided for in the contract.

Article 56 In the event of double insurance, a policy holder shall notify all insurers concerned of relevant information with respect to such double insurance.

For double insurance, the total amount of indemnity paid by all insurers concerned shall not exceed the insurable value. Unless specified otherwise in the contract, the insurers concerned shall undertake their respective obligations for indemnity according to the proportion of the sum insured by each of them to the total amount of the sum insured.

A policy holder with double insurance may require the insurers to refund pro rata the insurance premium for the excess of the total insured amount over the insurable value.

Double insurance refers to a policy holder entering into separate insurance contracts with two or more insurers for the same object insured, the same insurable interests and the same incident covered by insurance and where the total insured amount exceeds the insurable value.

Article 57 At the occurrence of an incident covered by insurance, the insured shall take all necessary measures to prevent or mitigate loss or damage.

The insurer shall bear all necessary and reasonable expenses incurred by the insured after the occurrence of the incident covered by insurance in taking measures to prevent or mitigate loss or damage of the object insured. The amount of such expenses borne by the insurer shall be calculated separately from the indemnity for the loss of the object insured and it shall not exceed the sum insured.

Article 58 In the event of the partial damage to an insured object, the policy holder may rescind the contract within 30 days after indemnification by the insurer. Unless otherwise provided for in the insurance contract, the insurer may also rescind the contract, but shall notify the policy holder 15 days in advance of such rescission.

In the event that an insurer rescinds the contract, the insurer shall refund to the policy holder the premium for the portion of the object insured which is not lost or damaged after deducting, as agreed upon in the contract, the receivable premium for the object insured which is not lost or damaged from the date of the commencement of cover to the date of rescission of the contract.

Article 59 After the occurrence of an incident covered by insurance, if the insurer pays the sum insured in full which is equal to the insurable value, the insurer shall retain all rights pertaining to the lost or damaged object insured. If the sum insured is less than the insurable value, the insurer shall obtain partial rights pertaining to the lost or damaged object insured based on the ratio of the sum insured to the insurable value.

Article 60 When the occurrence of an incident covered by insurance results from loss or damage to the object insured by a third party, the insurer shall, from the date indemnity is paid to the insured, exercise the subrogation right of the insured to demand indemnification against the third party up to the amount of indemnity paid.

After the occurrence of an incident covered by insurance referred to in the preceding paragraph, the insurer may, when paying indemnity, deduct a corresponding amount therefrom, which the insured has received as indemnity from the third party.

The subrogation right exercised by the insurer in accordance with the first paragraph shall in no way affect the insured's right to indemnity against the third party for the portion that is not indemnified.

Article 61 If the insured waives the right to indemnity against the third party after the occurrence of an incident covered by insurance and before the insurer pays the indemnity, the insurer shall bear no obligation for indemnity.

If the insured, without the insurer's consent, waives the right to indemnity against the third party after indemnity is paid by the insurer, the waiver shall be invalid.

An insurer may deduct or require the refund of a corresponding sum from the indemnity if it is not able to exercise the right to subrogation due to intentional fault or gross negligence of the insured.

Article 62 An insurer has no subrogation right against any family member or staff member of the insured, unless the occurrence of the incident covered by insurance referred to in the first paragraph of Article 60 above has resulted from the willful misbehavior of such a party.

Article 63 When an insurer exercises the right to subrogation against a third party, the insured shall provide the insurer with the necessary documents and relevant information known to him or her.

Article 64 An insurer shall bear all necessary and reasonable expenses incurred by the insurer and the insured for the purpose of investigating and ascertaining the nature and cause of the occurrence of the incident covered by insurance, and the extent of loss or damage to the object insured.

Article 65 An insurer may, in accordance with the provisions of law or the terms of an insurance contract, directly indemnify a third party for loss or damage caused by the insured under liability insurance.

Where the insured under liability insurance causes any damage to a third party and the liability of the insured for indemnity to the third party has been determined, the insurer shall directly pay insurance benefits to the third party according to the request of the insured. Where the insured is negligent in making such a request, the third party shall have the right to directly request the insurer to pay the insurance benefits for the damage to the third party.

Where the insured under liability insurance causes any damage to a third party and the insured has not indemnified the third party for the damage, the insurer shall not pay insurance benefits to the insured.

Liability insurance refers to insurance where the object insured is the insured's liability to indemnify a third party in accordance with the law.

Article 66 If the insured in a liability insurance contract is brought to arbitration or legal proceedings due to the occurrence of an incident covered by insurance which causes loss or damage to a third party, the insurer shall bear the cost of such arbitration or legal proceedings and other necessary and reasonable expenses paid by the insured, unless otherwise provided for in the insurance contract.

### Chapter III Insurance Companies

Article 67 The establishment of an insurance company shall be subject to the approval of the insurance regulatory authority under the State Council.

When examining an application for the establishment of an insurance company, the insurance regulatory authority under the State Council shall take into consideration the development of the insurance industry and the need for fair competition.

Article 68 To establish an insurance company, the following requirements shall be satisfied:

- (1) The principal shareholders of the insurance company having a sustainable capability to make profits, a good credit standing, no record of major violations of laws or regulations in the previous three years and net assets worth not less than RMB 200 million yuan;
- (2) Having articles of association in conformity with this Law and the Company Law of the People's Republic of China;
- (3) Having a registered capital conforming to the provisions of this Law;
- (4) Having directors, supervisors and senior managers with professional knowledge and experience in business operations;
- (5) Having a sound organizational structure and management systems;

(6) Having business premises conforming to requirements and other facilities relative to the insurance business; and

(7) Other requirements as prescribed by laws, administrative regulations and the insurance regulatory authority under the State Council.

Article 69 The minimum registered capital required for the establishment of an insurance company is RMB 200 million yuan.

The insurance regulatory authority under the State Council may adjust the amount of the minimum registered capital in accordance with the proposed scope of business and scale of operations; however, the minimum capital shall not be less than that stipulated in the first paragraph of this Article.

The minimum registered capital for the establishment of an insurance company shall be fully paid-up in monetary form.

Article 70 To establish an insurance company, the applicant shall apply in writing to the insurance regulatory authority under the State Council and submit the following documents and materials:

(1) A written application for establishment specifying the name, registered capital and the scope of business of the proposed insurance company;

(2) A feasibility study report;

(3) An establishment preparation plan;

(4) The investor's business license or other background information, and the accounting report of the previous year audited by an accounting firm;

(5) A list of the persons in charge of the establishment preparation group and the proposed chairman of the board of directors and managers who are acknowledged by the investors and the acknowledgement certificates of such persons; and

(6) Other materials required by the insurance regulatory authority under the State Council.

Article 71 The insurance regulatory authority under the State Council shall examine the application for the establishment of an insurance company, make a decision on approval or disapproval of establishment preparation within six months upon acceptance of the application, and notify the applicant in writing. If the insurance regulatory authority under the State Council disapproves the application, it shall give reasons in written form.

Article 72 An applicant shall complete the establishment preparation within one year after receiving the notice of approval on establishment preparation, and shall not carry out any insurance business operations during the establishment preparation period.

Article 73 After completing the establishment preparation work, an applicant may apply to open a business with the insurance regulatory authority under the State Council if the applicant satisfies the establishment conditions as prescribed in Article 68 of this Law.

The insurance regulatory authority under the State Council shall make a decision on approval or disapproval of the opening of a business within 60 days upon receipt of such an application. If it approves the application, it shall issue an insurance business permit; if it disapproves the application, it shall notify the applicant in writing and give reasons for such disapproval.

Article 74 An insurance company that intends to establish a branch office within the territory of the People's Republic of China shall obtain the approval of the insurance regulatory authority under the State Council. The branch offices of an insurance company do not possess the status of a legal person, and their civil liability shall be borne by the insurance company.

Article 75 To establish a branch office, an insurance company shall apply to an insurance regulatory authority in writing and submit the following materials:

- (1) A written application;
- (2) A three-year business development plan of the branch office to be established and market analysis materials;
- (3) The resumes and relevant certificates of the proposed senior managers of the branch office; and
- (4) Other materials as specified by the insurance regulatory authority under the State Council.

Article 76 An insurance regulatory authority shall examine the application for the establishment of a branch office of an insurance company and make a decision on approval or disapproval within 60 days upon acceptance of the application. If it approves the application, it shall issue an insurance business permit for the branch office; if it disapproves the application, it shall notify the applicant in writing and give reasons for such disapproval.

Article 77 The insurance company or its branch office approved for establishment shall conduct the registration formalities with the administrative authority for industry and commerce by presenting the insurance business permit, and obtain a business license.

Article 78 Where an insurance company and its branch offices, without justified reasons, fail to conduct the registration formalities at the administrative authority for industry and commerce within six months upon obtaining an insurance business permit, the insurance business permit shall become invalid.

Article 79 The establishment of a subsidiary company, branch office or representative office outside the territory of the People's Republic of China by an insurance company shall be subject to the approval of the insurance regulatory authority under the State Council.

Article 80 The establishment of a representative office within the territory of the People's Republic of China by a foreign insurance company shall be subject to the approval of the insurance regulatory authority under the State Council. No representative office may engage in insurance business operations.

Article 81 The directors, supervisors and senior managers of an insurance company shall maintain good conduct, be familiar with laws and administrative regulations on insurance, have the management capabilities required for performing their duties, and have obtained the

corresponding position-holding qualifications approved by an insurance regulatory authority before holding their positions.

The scope of senior managers of an insurance company shall be specified by the insurance regulatory authority under the State Council.

Article 82 A person shall not hold the position of director, supervisor or senior manager in an insurance company if that person falls within any of the circumstances prescribed in Article 147 of the Company Law of the People's Republic of China or if the person:

(1) Has been disqualified as a director, supervisor or senior manager of a financial institution by a financial regulatory authority due to a violation of law or discipline, and five years have not lapsed since the date of such disqualification; or

(2) Was formerly a lawyer, certified public accountant or professional of an institution such as asset assessment institution or verification institution, but his or her practicing qualification has been revoked due to a violation of law or discipline, and five years have not lapsed since the date of such disqualification.

Article 83 Where a director, supervisor or senior manager of an insurance company violates laws, administrative regulations or articles of association of the company in the process of performing duties for the company and causes losses to the company, that person shall be liable for compensation.

Article 84 Approval by an insurance regulatory authority is required for an insurance company under any of the following circumstances:

(1) Change of name;

(2) Change in the amount of registered capital;

(3) Change of business premises of the company or its branch offices;

(4) Closure of a branch office;

(5) Division or merger of the company;

(6) Amendment to its articles of association;

(7) Change of a shareholder whose amount of capital contribution accounts for 5% or more of the total capital of a limited liability company, or change of a shareholder who holds 5% or more of the shares of a joint-stock limited company; or

(8) Any other change as specified by the insurance regulatory authority under the State Council.

Article 85 Insurance companies shall employ actuaries recognized by the insurance regulatory authority under the State Council and set up an actuarial statement system.

Insurance companies shall employ professionals to set up a regulatory compliance reporting system.

Article 86 Insurance companies shall file the relevant reports, statements, documents and materials in accordance with the provisions of the insurance regulatory authorities.

The solvency reports, financial and accounting reports, actuarial statements, regulatory compliance reports and other relevant reports, statements, documents and materials of the insurance companies must truthfully record insurance business matters and contain no false records, misleading presentations or material omissions.

Article 87 Insurance companies shall, in accordance with the provisions of the insurance regulatory authority under the State Council, properly maintain complete account books, original documents and relevant materials about insurance business operations.

The account books, original documents and relevant materials mentioned in the preceding paragraph shall be maintained for at least five years if the duration of insurance is less than one year, or ten years if the duration of insurance is more than one year calculated from the day an insurance contract is terminated.

Article 88 Where an insurance company engages or dismisses an accounting firm, an asset assessment institution, a credit rating agency or any other intermediary service provider from its service, it shall report such development to the insurance regulatory authority. In the case of dismissal of such intermediary service providers, it shall provide reasons for such dismissal.

Article 89 Where an insurance company needs to be dissolved as a result of a division or merger of the company, the decision of the shareholders' meeting or occurrence of a cause for its dissolution as stipulated by the company's articles of association, the insurance company shall be dissolved upon the approval of the insurance regulatory authority under the State Council.

An insurance company, which includes life insurance in its business, shall not be dissolved except for any division, merger or cancellation in accordance with the law.

A liquidation group shall be set up to perform liquidation when an insurance company is dissolved.

Article 90 Where an insurance company falls under any of the circumstances prescribed in Article 2 of the Enterprise Bankruptcy Law of the People's Republic of China, upon the approval of the insurance regulatory authority under the State Council, the insurance company or any creditor thereof may apply to a people's court for reorganization, reconciliation or bankruptcy liquidation. The insurance regulatory authority under the State Council may also apply to a people's court for reorganization or bankruptcy liquidation of the company in accordance with the law.

Article 91 The bankrupt's estate shall, after giving priority to paying off the expenses of bankruptcy proceedings and debts incurred for the common benefit of creditors, be used for the payment of debts in the following order:

(1) Wages and salaries as well as medical fees, disability subsidies and pensions owed to employees, basic endowment insurance premiums and basic medical insurance premiums which should be transferred into the personal accounts of employees, and compensation which should be made to employees as required by laws and administrative regulations;



- (2) Indemnity or the payment of insurance benefits;
- (3) Social insurance fees other than those prescribed in Subparagraph (1) and taxes owed by the company; and
- (4) General creditor's rights in bankruptcy.

If the bankrupt's estate is not sufficient for repayment of debts in the same order, it shall be distributed pro rata.

The salaries of the directors, supervisors and senior managers of a bankrupt insurance company shall be calculated as per the average wage of the employees of the company.

Article 92 Where an insurance company which includes life insurance in its business is cancelled or declared bankrupt in accordance with the law, it shall assign its life insurance contracts and liability reserve funds to another insurance company which includes life insurance in its business. Where the insurance company cannot reach an assignment agreement with another insurance company, the insurance regulatory authority under the State Council shall designate an insurance company which includes life insurance in its business to accept the assignment.

In the assignment of the life insurance contracts and liability reserve funds prescribed in the preceding paragraph or the acceptance of assignment of the same as designated by the insurance regulatory authority under the State Council, the legal rights and interests of the insured and the beneficiaries shall be protected.

Article 93 When an insurance company ceases its business operations in accordance with the law, its license to conduct insurance business shall be canceled.

Article 94 Insurance companies shall be regulated by the Company Law of the People's Republic of China, unless otherwise provided for by this Law.

## Chapter IV Rules Governing Insurance Operations

Article 95 The scope of business of an insurance company shall be as follows:

- (1) Insurance of person, which includes life insurance, health insurance, accidental injury insurance, etc.;
- (2) Property insurance, which includes property damage insurance, liability insurance, credit insurance, surety insurance, etc.; and
- (3) Other relevant insurance businesses approved by the insurance regulatory authority under the State Council.

An insurer is forbidden to concurrently engage in the businesses of both insurance of person and insurance of property. However, upon approval of the insurance regulatory authority under the

State Council, an insurance company which operates a property insurance business may operate a short-term health insurance business and accidental injury insurance business.

An insurance company shall operate its insurance business within the scope of business approved by the insurance regulatory authority under the State Council.

Article 96 Subject to approval by the insurance regulatory authority under the State Council, an insurance company may engage in the following reinsurance business with respect to the insurance businesses prescribed in Article 95 of this Law:

(1) Outward reinsurance; and

(2) Inward reinsurance.

Article 97 An insurance company shall draw a guarantee fund at the rate of 20% of its total registered capital, deposit it into a bank designated by the insurance regulatory authority under the State Council, and use it for no purpose other than the repayment of debts at the time of liquidation of the company.

Article 98 Insurance companies shall, in accordance with the principles of safeguarding the interests of the insured and guaranteeing the ability to reimburse, set aside all liability reserve funds.

Specific measures for setting aside and carrying forward the liability reserve funds by insurance companies shall be formulated by the insurance regulatory authority under the State Council.

Article 99 Insurance companies shall collect accumulation funds in accordance with the law.

Article 100 Insurance companies shall contribute to an insurance protection fund.

The insurance protection fund shall be managed in a centralized way and used on the basis of overall planning and arrangement in the following circumstances:

(1) Providing remedies for policy holders, the insured or beneficiaries when an insurance company is closed or declared bankrupt;

(2) Providing remedies for an insurance company which accepts the life insurance contracts of another insurance company, which is closed or declared bankrupt; or

(3) Any other circumstance as prescribed by the State Council.

Specific measures for raising, managing and using the insurance protection fund shall be formulated by the State Council.

Article 101 An insurance company shall maintain a minimum solvency commensurate with its scale of business and degree of risk. The difference between the admissible assets and admissible liability of an insurance company shall not be less than the amount specified by the insurance regulatory authority under the State Council; otherwise, the insurance company shall take corresponding measures to reach the amount stipulated in accordance with the requirements of the insurance regulatory authority under the State Council.

Article 102 For insurance companies engaged in property insurance, the self-retained premiums for the current year shall not exceed four times the combined total of its actual capital and its accumulation fund.

Article 103 The liability borne by an insurance company for each risk unit, that is, the liability of an insurance company that might arise from the maximum loss or damage caused by the occurrence of a single incident covered by insurance, shall not exceed 10% of the combined total of its actual capital and its accumulation fund. Reinsurance shall be arranged for the portion in excess of this sum. An insurance company shall classify risk units in accordance with the provisions of the insurance regulatory authority under the State Council.

Article 104 An insurance company's method for classifying risk units and its arrangement plan on the risk of major disasters shall be submitted to the insurance regulatory authority under the State Council for the record.

Article 105 An insurance company shall arrange reinsurance in accordance with the relevant provisions specified by the insurance regulatory authority under the State Council, and select a reinsurer in a prudent way.

Article 106 An insurance company shall use its funds in a steady manner and follow the principle of safety.

The use of funds of an insurance company is limited to the following forms:

- (1) Bank deposits;
- (2) Trading bonds, stocks, shares of securities investment funds and other negotiable securities;
- (3) Investment in real estate; and
- (4) Other uses of funds prescribed by the State Council.

The specific measures for the administration of the use of funds by an insurance company shall be formulated by the insurance regulatory authority under the State Council in accordance with the preceding two paragraphs.

Article 107 Upon approval of the insurance regulatory authority under the State Council in conjunction with the securities regulatory authority under the State Council, an insurance company may establish an insurance asset management company.

Insurance asset management companies shall conduct securities investment activities in accordance with the Securities Law of the People's Republic of China and other relevant laws and administrative regulations.

The measures for the administration of insurance asset management companies shall be formulated by the insurance regulatory authority under the State Council in conjunction with other relevant departments under the State Council.

Article 108 An insurance company shall set up a management and information disclosure system of affiliated transactions in accordance with the provisions of the insurance regulatory authority under the State Council.

Article 109 None of the controlling shareholders, actual controllers, directors, supervisors and senior managers of an insurance company may make use of the affiliated transactions to damage the interests of the company.

Article 110 An insurance company shall, in accordance with the provisions of the insurance regulatory authority under the State Council, truthfully, accurately and completely disclose its financial and accounting reports, risk management condition, insurance product trading information and other major matters.

Article 111 Insurance salespersons of an insurance company shall meet the qualification requirements set forth by the insurance regulatory authority under the State Council and obtain the qualification certificates issued by an insurance regulatory authority.

The scope and management measures of the insurance salespersons mentioned in the preceding paragraph shall be specified by the insurance regulatory authority under the State Council.

Article 112 Insurance companies shall set up an insurance agent registration system and strengthen the training and management of insurance agents, and shall not incite or induce insurance agents to act against the obligation of good faith.

Article 113 Insurance companies and their branches shall use their insurance business permits in accordance with the law, and shall not transfer, lease or lend their insurance business permits.

Article 114 Insurance companies shall, in accordance with the provisions of the insurance regulatory authority under the State Council, fairly and reasonably determine the insurance clauses and premium rates, and shall not damage the legitimate rights and interests of policy holders, the insured and beneficiaries.

Insurance companies shall perform their obligation of paying indemnity or insurance benefits in a timely manner in accordance with insurance contracts and this Law.

Article 115 Insurance companies shall follow the principle of fair competition in their business operations, and shall not engage in unfair competition.

Article 116 Insurance companies and their staff shall not engage in any of the following acts in their insurance business operations:

- (1) Deceive a policy holder, insured or beneficiary;
- (2) Conceal important information related to an insurance contract from a policy holder;
- (3) Obstruct a policy holder from performing or induce a policy holder not to perform the obligation of making a full and accurate disclosure as prescribed by this Law;

- (4) Give or promise to give premium rebates or other benefits not specified in the insurance contract to a policy holder, insured or beneficiary ;
- (5) Refuse to perform the obligation of paying indemnity or insurance benefits as agreed in the insurance contract in accordance with the law;
- (6) Intentionally make up an incident covered by insurance which has never occurred or fabricate an insurance contract or intentionally exaggerate the degree of damage caused by an incident covered by insurance which has actually occurred, for the purpose of making a false claim, swindling insurance benefits or seeking other illegitimate interests;
- (7) Misappropriate, intercept or encroach on insurance premiums;
- (8) Entrust an institution or individual without legal qualification to engage in insurance sales activities;
- (9) Carry out insurance business in order to seek illegitimate interests for any other institution or individual;
- (10) Take advantage of insurance agents, insurance brokers or insurance assessment agencies to carry out illegal activities such as swindling money by fabricating insurance intermediary business or surrendering of insurance;
- (11) Damage the business reputation of competitors by fabrication or spreading of misrepresented facts, or disturbing the order of the insurance market by any other act of unfair competition;
- (12) Disclose commercial secrets of a policy holder or the insured learned during an insurance business activity; and
- (13) Conduct any other act in violation of the provisions of laws, administrative regulations or the provisions of the insurance regulatory authority under the State Council.

## Chapter V Insurance Agents and Insurance Brokers

Article 117 An insurance agent is an entity or individual that has been authorized by an insurer to transact insurance business on the insurer's behalf within the scope of authorization and receives commission in return from the insurer.

Insurance agencies include full-time insurance agencies which specialize in the insurance agency business and part-time insurance agencies which operate an insurance agency business concurrently with another business.

Article 118 An insurance broker is an entity that, in the interest of the policy holder, provides intermediary services between the policy holder and the insurer for the conclusion of an insurance contract and receives a commission therefore in accordance with the law.

Article 119 An insurance agent or an insurance broker shall meet the requirements prescribed by the insurance regulatory authority under the State Council and shall obtain an insurance agent's permit or an insurance broker's permit issued by an insurance regulatory authority.

A full-time insurance agency or insurance broker shall register with the permit issued by the insurance regulatory authority at the administrative authority for industry and commerce to obtain a business license.

A part-time insurance agency shall conduct the formalities for change of registration at the administrative authority for industry and commerce with the permit issued by the insurance regulatory authority.

Article 120 Where a full-time insurance agency or insurance broker is formed as a company, its minimum amount of registered capital shall be regulated by the Company Law of the People's Republic of China.

The insurance regulatory authority under the State Council may adjust the minimum amount of registered capital of a full-time insurance agency or insurance broker according to its business scope and scale of operations, but the amount shall not be less than the amount prescribed in the Company Law of the People's Republic of China.

The registered capital or capital contribution of a full-time insurance agency or an insurance broker must be paid-in monetary capital.

Article 121 The senior managers of a full-time insurance agency or insurance broker shall maintain good conduct, be familiar with laws and administrative regulations on insurance, possess business management capabilities required for performing their duties, and have obtained the corresponding position-holding qualifications approved by an insurance regulatory authority before holding their positions.

Article 122 An individual insurance agent, a practitioner of an insurance agency or a practitioner of an insurance broker shall meet the qualification requirements prescribed by the insurance regulatory authority under the State Council and shall obtain a qualification certificate issued by an insurance regulatory authority.

Article 123 Insurance agencies and insurance brokers shall have their own business premises and set up special account books to record the revenues and expenditures of the insurance agency or brokerage business.

Article 124 An insurance agency or insurance broker shall, in accordance with the provisions of the insurance regulatory authority under the State Council, pay money into a guarantee fund or buy professional liability insurance. Without the approval of an insurance regulatory authority, no insurance agency or insurance broker may use the guarantee fund.

Article 125 When transacting life insurance business, no individual insurance agent may accept authorization from two or more insurers concurrently.

Article 126 Where the insurer authorizes an insurance agent to transact insurance business on its behalf, it shall sign an agreement to this effect with the insurance agent, in which the rights and obligations of both parties are agreed upon in accordance with the law.

Article 127 The insurer shall be liable for the acts of the insurance agents when they transact the insurance businesses which are authorized by the insurer.

Where an insurance agent enters into an insurance contract in the name of an insurer without authorization, beyond authorization or after the termination of authorization and the policy holder has good reasons to believe that it has the authority of agency, the act of agency shall be valid. The insurer may, in accordance with the law, investigate the responsibility of the insurance agent that oversteps the authority delegated to it.

Article 128 An insurance broker shall be liable for losses or damages caused to the policy holder or the insured due to his or her mistakes.

Article 129 Parties to an insurance activity may authorize a public insurance assessment institution or any other legally established independent assessment institution or person with relevant expertise to assess and authenticate an incident covered by insurance.

The institution and person authorized to assess and authenticate an incident covered by insurance shall conduct assessment and authentication in a legal, independent, objective and fair way, no entity or individual shall intervene in such assessment and authentication.

The institution or person mentioned in the preceding paragraph shall assume the compensatory liability when causing any loss to an insurer or insured intentionally or negligently.

Article 130 Insurance commission shall only be paid to legally qualified insurance agents and insurance brokers, not to any other persons.

Article 131 When transacting insurance business, no insurance agent, broker or their practitioners may commit any of the following acts:

- (1) Deceive the insurer, policy holder, insured or beneficiary;
- (2) Conceal material information with respect to the insurance contract;
- (3) Prevent the policy holder from fulfilling his obligation of making a full and accurate disclosure, or induce the policy holder not to fulfill his obligation of making a full and accurate disclosure;
- (4) Give or promise to give the policy holder, the insured or beneficiary benefits other than the ones provided for in the insurance contract;
- (5) Coerce or induce the policy holder to enter into an insurance contract, or restrict the policy holder from entering into an insurance contract, by taking advantage of administrative powers, their positions or occupational facilities, or by employing other illegitimate means;
- (6) Forge an insurance contract, or modify any insurance contract without authorization, or provide false proof materials for a party to an insurance contract;

- (7) Misappropriate, intercept or encroach on insurance premiums or insurance benefits;
- (8) Seek any illegitimate benefit for any other institution or individual by using business advantages;
- (9) Collude with any policy holder, insured or beneficiary to swindle insurance benefits; or
- (10) Disclose any commercial secret of an insurer, policy holder or insured learned during business activities.

Article 132 The split, merger, dissolution or change of organizational form of a full-time insurance agency or an insurance broker as well as the formation of a branch office shall be subject to the approval of an insurance regulatory authority.

Article 133 The provisions of the first paragraph of Articles 86 and Article 113 of this Law shall apply to insurance agencies and insurance brokers.

## Chapter VI Supervision and Administration of the Insurance Industry

Article 134 An insurance regulatory authority shall, in accordance with the principles of legality, openness and fairness, supervise and administer the insurance industry according to its duties prescribed by this Law and the State Council, to maintain the order of the insurance market and protect the legitimate rights and interests of policy holders, insured and beneficiaries.

Article 135 The insurance regulatory authority under the State Council shall formulate and issue rules on the supervision and administration of the insurance industry in accordance with laws and administrative regulations.

Article 136 Insurance clauses and premium rates for insurance products related to the public interest, insurance products which are compulsory in accordance with the law, and newly developed life insurance products shall be submitted to the insurance regulatory authority under the State Council for approval. When conducting examination and approval, the insurance regulatory authority under the State Council shall abide by the principles of protecting the interests of the public and preventing unfair competition. Insurance clauses and premium rates for other insurance products shall be submitted to the insurance regulatory authority for the record.

The specific measures for examination and approval and filing of insurance clauses and premium rates shall be formulated by the insurance regulatory authority under the State Council according to the preceding paragraph.

Article 137 Where any insurance clause or premium rate used by an insurance company violates any of the laws, administrative regulations or the relevant provisions of the insurance regulatory authority under the State Council, the insurance regulatory authority shall order the insurance company to stop using such clause or rate and make corrections within a prescribed time limit. If



the circumstances are serious, the said authority may prohibit the insurance company from applying for new insurance clauses or insurance premium rates within a prescribed time limit.

Article 138 The insurance regulatory authority under the State Council shall establish a sound system for supervision over and administration of the solvency of insurance companies, in order to exercise supervision and control in this respect.

Article 139 The insurance regulatory authority under the State Council shall regard insolvent insurance companies as its key objects of supervision and administration, and may take the following measures according to the specific circumstances:

- (1) Order an increase of capital or reinsurance;
- (2) Restrict the business scope;
- (3) Restrict the payment of dividends to shareholders;
- (4) Restrict the purchase of fixed assets or the scale of operation costs;
- (5) Restrict the forms and proportion of use of funds;
- (6) Restrict the establishment of additional branch offices;
- (7) Order an auction of non-performing assets or the transfer of insurance business;
- (8) Restrict the level of salaries of directors, supervisors and senior managers;
- (9) Restrict commercial advertisements; and
- (10) Order the cessation of accepting new business.

Article 140 Where an insurance company fails to set aside or carry forward various liability reserve funds or to carry out reinsurance in accordance with this Law, or seriously violates the provisions of this Law on the use of funds, the insurance regulatory authority shall order it to make corrections within a prescribed time limit, and may order it to replace the person in charge and the relevant managers.

Article 141 Where an insurance company fails to make corrections within a prescribed time limit after an insurance regulatory authority, in accordance with Article 140 of this Law, makes a decision on correction within a time limit, the insurance regulatory authority under the State Council may decide to select and send insurance professionals and designate relevant personnel from the insurance company to form a rectification group to carry out the rectification work of the said insurance company.

A decision on rectification shall be publicized, giving the name of the insurance company referred to, the reason for rectification, the composition of the rectification group and the period of rectification.

Article 142 The rectification group shall have the authority to supervise the daily business operations of the insurance company being rectified. The person in charge and the relevant

managers of the insurance company shall discharge their respective duties and powers under the supervision of the rectification group.

Article 143 In the course of the rectification, the original business of the insurance company in rectification shall be continued. The insurance regulatory authority under the State Council may, however, order the said company to stop some original business or stop accepting new business and make adjustments to the use of its funds.

Article 144 Where an insurance company under rectification has rectified its violations of this Law and resumed its normal business operations, the rectification group shall submit a report thereon and cease rectification after the report is approved by the insurance regulatory authority under the State Council, and the said authority shall make an announcement thereon.

Article 145 Where an insurance company falls under either of the following circumstances, the insurance regulatory authority under the State Council may take control:

- (1) The company is insolvent to a serious degree; or
- (2) The company, in violation of this Law, impairs the public interests, which may seriously jeopardize or has already seriously jeopardized its solvency.

The creditor-debtor relationship of the insurance company taken over shall not change after it is taken over.

Article 146 The composition of the take-over group and the measures for implementation of the take-over shall be determined and publicized by the insurance regulatory authority under the State Council.

Article 147 Where the term of a take-over expires, the insurance regulatory authority under the State Council may decide to extend it. However, the maximum term of a take-over shall not exceed two years.

Article 148 Where the term of a take-over expires and the insurance company has resumed its normal operational capacity, the decision to terminate the take-over shall be made by the insurance regulatory authority under the State Council and an announcement made thereon.

Article 149 Where an insurance company in rectification or take-over falls under any of the circumstances prescribed in Article 2 of the Enterprise Bankruptcy Law of the People's Republic of China, the insurance regulatory authority under the State Council may apply to the people's court for a reorganization or bankruptcy liquidation of the insurance company.

Article 150 Where the insurance business permit of an insurance company is revoked due to illegal business operations, or the solvency of an insurance company is lower than the standard prescribed by the insurance regulatory authority under the State Council, and the order of the insurance market will be seriously endangered or the public interests will be seriously damaged if the insurance company is not closed, the insurance regulatory authority under the State Council shall close it, make an announcement thereon and form a liquidation group to conduct liquidation in accordance with the law in a timely manner.

Article 151 The insurance regulatory authority under the State Council shall have the right to require the shareholders and actual controllers of any insurance company to provide relevant information and materials within a prescribed time limit.

Article 152 Where a shareholder of an insurance company seriously damages the interests of the company through affiliated transactions, which endangers the company's solvency, the insurance regulatory authority under the State Council shall order the shareholder to make corrections. Before the shareholder makes corrections as ordered, the said authority may restrict his or her shareholder's rights; and, if the shareholder refuses to make corrections, may order him or her to assign his or her shares of the insurance company.

Article 153 An insurance regulatory authority may, in accordance with the needs for performing its functions of supervision and administration, hold supervisory talks with the directors, supervisors and senior managers of an insurance company and require them to explain important matters concerning business operations and risk management of the insurance company.

Article 154 During the period of rectification, take-over or liquidation as a result of the closure of an insurance company or upon the occurrence of any major risk to an insurance company, the insurance regulatory authority under the State Council may take the following measures against the directly responsible directors, supervisors, senior managers and other directly responsible persons of the company:

- (1) Notify the border exit administration organ to prevent them from leaving the country; or
- (2) Request the judicial authority to prohibit them from disposing of their property by displacement, transfer or other means, or from placing other rights on their property.

Article 155 An insurance regulatory authority may take the following measures when performing its functions and duties in accordance with the law:

- (1) Carry out on-site inspections of insurance companies, insurance agents, insurance brokers, insurance asset management companies and representative offices of foreign insurance institutions;
- (2) Enter a place where an illegal act is suspected of having occurred to investigate and take evidence;
- (3) Inquire of the parties concerned and other entities and individuals related to the investigated event, and require them to explain the matters related to the investigated event;
- (4) Consult and copy materials related to the investigated event, such as materials on the registration of property rights;
- (5) Consult and copy financial and accounting materials and other relevant documents and materials of insurance companies, insurance agents, insurance brokers, insurance asset management companies, representative offices of foreign insurance institutions, and other entities and individuals related to the investigated event, and seal up documents and materials which could be displaced, concealed or destroyed;

(6) Conduct an inquiry into the bank accounts of insurance companies, insurance agents, insurance brokers, insurance asset management companies and representative offices of foreign insurance institutions which are suspected of illegal business operations and the bank accounts of the entities and individuals related to the suspected illegal matters; and

(7) Upon approval of the chief person in charge of an insurance regulatory authority, apply to the people's court to freeze or seal up the assets involved, such as illegal funds which have been proved to be or could be displaced or concealed, or any important evidence which has been proved to be or could be concealed, forged or destroyed.

To take the measures prescribed in Subparagraph (1), (2) or (5) of the preceding paragraph, the insurance regulatory authority shall obtain the approval of the person in charge of the authority. To take the measures prescribed in Subparagraph (6), the insurance regulatory authority shall obtain the approval of the person in charge of the insurance regulatory authority under the State Council.

Where an insurance regulatory authority conducts a supervisory inspection or investigation in accordance with the law, there shall be at least two supervisory inspectors or investigators who shall present their legal certificates and a notice of supervisory inspection or investigation. If there are less than two supervisory inspectors or investigators or they fail to present their legal certificates or a notice of supervisory inspection or investigation, the entity or individual subjected to inspection or investigation shall have the right to refuse the inspection or investigation.

Article 156 The insurance regulatory authority shall carry out its functions and duties in accordance with the law, and the entity or individual subjected to inspection or investigation shall cooperate with the said authority.

Article 157 The staff of an insurance regulatory authority shall be devoted to their duties, handle affairs in accordance with the law and be fair and uncorrupt, and shall neither seek illegitimate benefits by taking advantage of their positions nor disclose commercial secrets of the relevant entities or individuals which they have access to.

Article 158 The insurance regulatory authority under the State Council shall set up an information-sharing mechanism of supervision and administration with the People's Bank of China and other financial regulatory institutions under the State Council.

When an insurance regulatory authority performs its duties and carries out the supervisory inspection and investigation in accordance with the law, the relevant departments shall cooperate with it.

## Chapter VII Legal Liability

Article 159 Anyone who, in violation of this Law, establishes an insurance company or insurance asset management company without approval or engages in illegal commercial insurance business

operation, the insurance regulatory authority shall ban such a company or such business operation, confiscate the illegal gains and impose a fine of not less than one time but not more than five times the amount of the illegal gains. If there are no unlawful gains or the amount of illegal gains is less than RMB 200,000 yuan, the fine shall be not less than RMB 200,000 yuan but not more than RMB one million yuan.

Article 160 Anyone who, in violation of this Law, establishes a full-time insurance company or insurance broker without approval or engages in any insurance agency business operation or insurance brokerage business operation without an insurance agency business permit or an insurance brokerage business license, the insurance regulatory authority shall ban such full-time insurance company or insurance broker, confiscate the illegal gains and impose a fine of not less than one time but not more than five times the amount of the illegal gains. If there are no illegal gains or the amount of the illegal gains is less than RMB 50,000 yuan, the fine shall be not less than RMB 50,000 yuan but not more than RMB 300,000 yuan.

Article 161 Where an insurance company, in violation of this Law, engages in insurance business beyond the approved scope of business, the relevant insurance regulatory authority shall order it to make corrections within a specified time limit, confiscate its illegal gains and impose on it a fine of not less than one time but not more than five times the amount of its illegal gains, or a fine of not less than RMB100,000 yuan but not more than RMB 500,000 yuan if there are no illegal gains or the amount of the illegal gains is less than RMB 100,000 yuan. If the insurance company fails to make corrections within the specified time limit or if the consequences are serious, the said authority shall order it to suspend business operations for rectification or revoke its insurance business permit.

Article 162 Where an insurance company commits any of the acts prescribed in Article 116 of this Law, the insurance regulatory authority shall order it to make corrections and impose on it a fine of not less than RMB 50,000 yuan but not more than RMB 300,000 yuan. If the circumstances are serious, the said authority shall restrict its scope of business, order it to cease accepting new business or revoke its insurance business permit.

Article 163 Where an insurance company violates Article 84 of this Law, the insurance regulatory authority shall order it to make corrections and impose on it a fine of not less than RMB 10,000 yuan but not more than RMB 100,000 yuan.

Article 164 Where an insurance company, in violation of this Law, commits any of the following acts, the insurance regulatory authority shall order it to make corrections and impose on it a fine of not less than RMB 50,000 yuan but not more than RMB 300,000 yuan:

- (1) Underwriting excess insurance, where the circumstances are serious; or
- (2) Underwriting insurance of person, which takes death as the condition for the payment of the insurance benefits for a person without the capacity for civil conduct.

Article 165 Where an insurance company, in violation of this Law, commits any of the following acts, the insurance regulatory authority shall order it to make corrections and impose a fine of not less than RMB 50,000 yuan but not more than RMB 300,000 yuan. If the circumstances are serious,

the said authority may restrict that its scope of business, order it to cease accepting new business or revoke his or her insurance business permit:

- (1) Fails to set up a guarantee fund as required or uses the guarantee fund in violation of the provisions;
- (2) Fails to set aside or carry forward all the liability reserve funds as required;
- (3) Fails to pay into the insurance guarantee fund or contribute to the accumulation fund as required;
- (4) Fails to take out reinsurance as required;
- (5) Fails to use the funds of the insurance company as required;
- (6) Establishes branches or representative offices without approval; or
- (7) Fails to submit for approval the insurance clauses or premium rates as required.

Article 166 Where an insurance agency or insurance broker commits any of the acts prescribed in Article 131 of this Law, the insurance regulatory authority shall order it to make corrections and impose on it a fine of not less than RMB 50,000 yuan but not more than RMB 300,000 yuan. If the circumstances are serious, the said authority shall revoke its insurance business permit.

Article 167 Where an insurance agency or insurance broker, in violation of this Law, commits any of the following acts, the insurance regulatory authority shall order it to make corrections and impose on it a fine of not less than RMB 20,000 yuan but not more than RMB 100,000 yuan. If the circumstances are serious, the said authority shall order it to suspend business for rectification or revoke its insurance business permit:

- (1) Fails to pay into the guarantee fund or to purchase professional liability insurance as required; or
- (2) Fails to maintain a special account book to record revenues and expenditures as required.

Article 168 Where a full-time insurance agency or insurance broker, in violation of this Law, sets up a branch office or changes its organizational form without approval, the insurance regulatory authority shall order it to make corrections and impose on it a fine of not less than RMB 10,000 yuan but not more than RMB 50,000 yuan.

Article 169 Where anyone, in violation of this Law, engages any person without position-holding qualification or practicing qualification, the insurance regulatory authority shall order it to make corrections and impose a fine of not less than RMB 20,000 yuan but not more than RMB 100,000 yuan.

Article 170 Where anyone, in violation of this Law, transfers, leases, or lends its insurance business permit, the insurance regulatory authority shall impose a fine of not less than RMB 10,000 yuan but not more than RMB 100,000 yuan. If the consequences are serious, the insurance regulatory

authority shall order it to suspend business for rectification or revoke his or her insurance business permit.

Article 171 Where anyone, in violation of this Law, commits any of the following acts, the insurance regulatory authority shall order it to make corrections within a specified time limit. If the said person fails to make corrections within the specified time limit, the insurance regulatory authority shall impose a fine of not less than RMB 10,000 yuan but not more than RMB 100,000 yuan:

- (1) Fails to submit or keep reports, statements, documents or information as required, or fails to provide the relevant information or materials as required;
- (2) Fails to file insurance clauses or premium rates as required; or
- (3) Fails to disclose information as required.

Article 172 Where anyone, in violation of this Law, commits any of the following acts, the insurance regulatory authority shall order it to make corrections and impose a fine of not less than RMB 100,000 yuan but not more than RMB 500,000 yuan; and if the circumstances are serious, the said authority may restrict its scope of business, order it to cease accepting new insurance business or revoke its insurance business permit:

- (1) Compiles or submits false reports, statements, documents and information;
- (2) Refuses or hinders supervision and inspection conducted in accordance with the law; or
- (3) Fails to use the approved or filed insurance clauses or premium rates as required.

Article 173 Where an insurance company, insurance asset management company, full-time insurance agency or insurance broker violates this Law, the insurance regulatory authority shall, in addition to imposing punishment on the relevant entity in accordance with the provisions of Article 161 through Article 172 respectively, give a warning to the directly responsible persons in charge and other directly responsible persons and impose on them a fine of not less than RMB 10,000 yuan but not more than RMB 100,000 yuan. If the circumstances are serious, the said authority shall cancel their position-holding qualification or practicing qualification.

Article 174 Where an individual insurance agent violates this Law, the insurance regulatory authority shall give him or her a warning and may impose a fine of not more than RMB 20,000 yuan. If the circumstances are serious, the said authority shall impose on him or her a fine of not less than RMB 20,000 yuan but not more than RMB 100,000 yuan and may revoke his or her qualification certificate.

Where a person engages in individual insurance agent business without a legal qualification, the insurance regulatory authority shall give him or her a warning and may impose a fine of not more than RMB 20,000 yuan. If the circumstances are serious, the said authority shall impose a fine of not less than RMB 20,000 yuan but not more than RMB 100,000 yuan.

Article 175 Where a foreign insurance institution sets up a representative office within the territory of the People's Republic of China without the approval of the insurance regulatory authority

under the State Council, the said authority shall ban the representative office and impose a fine of not less than RMB 50,000 yuan but not more than RMB 300,000 yuan on the foreign insurance institution.

Where a representative office set up by a foreign insurance institution within the territory of the People's Republic of China engages in insurance business operations, the insurance regulatory authority shall order it to make corrections, confiscate its illegal gains and impose on it a fine of not less than one time but not more than five times the amount of its illegal gains; if there are no illegal gains or the amount of the illegal gains is less than RMB 200,000 yuan, the insurance regulatory authority shall impose on it a fine of not less than RMB 200,000 yuan but not more than RMB one million yuan, and may order it to replace its chief representative. If the circumstances are serious, the said authority shall cancel the representative office.

Article 176 A policy holder, insured or beneficiary who commits any of the following acts for the purpose of insurance fraud shall be subject to administrative penalties if it does not constitute a crime:

- (1) A policy holder intentionally makes up an insured object to swindle insurance benefits;
- (2) Makes up an incident covered by insurance which has never occurred, or makes up the cause of an incident covered by insurance or exaggerates the degree of damage caused by an incident covered by insurance to swindle insurance benefits; or
- (3) Intentionally causes an incident covered by insurance to swindle insurance benefits.

An appraiser, assessor or certifier of an incident covered by insurance who intentionally submits any false certificate to provide conditions for a policy holder, insured or beneficiary to commit an insurance fraud shall be punished in accordance with the preceding paragraph.

Article 177 Anyone who, in violation of this Law, causes damage or loss to others, shall bear civil liability in accordance with the law.

Article 178 Anyone who refuses or obstructs supervisory inspection or investigation performed by the insurance regulatory authority and its personnel in accordance with the law shall be subject to administrative penalties for public security if no violence or threat is used.

Article 179 Where any provision of a law or administrative regulation is violated and the circumstances are serious, the insurance regulatory authority under the State Council may forbid the relevant responsible persons from practicing in the insurance sector within a prescribed time limit or even for a lifetime.

Article 180 Where any staff member of an insurance regulatory authority who undertakes supervision and administration work commits any of the following acts, the person shall be subject to disciplinary sanctions in accordance with the law:

- (1) Approves the establishment of an institution in violation of provisions;
- (2) Examines and approves insurance clauses or premium rates in violation of provisions;



- (3) Carries out on-site inspections in violation of provisions;
- (4) Makes inquiries about accounts or freezes funds in violation of provisions;
- (5) Discloses commercial secrets of a relevant entity or individual which become known to him or her;
- (6) Imposes administrative penalties in violation of provisions; or
- (7) Any other act of abusing power or neglecting duties.

Article 181 Any violation of this Law shall be investigated for criminal liability if a crime is constituted.

## Chapter VIII Supplementary Provisions

Article 182 An insurance company shall join the insurance association. An insurance agent, insurance broker and public insurance assessment institution may also join the insurance association.

The Insurance Association of China is a self-disciplinary organization for the insurance sector and is a social group legal person.

Article 183 This Law shall apply to commercial insurance businesses operated by legally established insurance organizations other than insurance companies.

Article 184 The Maritime Code of the People's Republic of China shall be applicable to marine insurance. For matters not covered by the Maritime Code of the People's Republic of China, this Law shall apply.

Article 185 This Law shall apply to Chinese-foreign joint venture insurance companies, wholly foreign-funded insurance companies and branches of foreign insurance companies. Where other laws and administrative regulations provide otherwise, such provisions shall prevail.

Article 186 The State supports the development of insurance businesses which facilitate agricultural production. Agricultural insurance shall be governed separately by laws and administrative regulations.

For compulsory insurance, if laws and administrative regulations provide otherwise, such provisions shall prevail.

Article 187 This Law shall go into effect as of October 1, 2009.

# **Enterprise Bankruptcy Law of the People's Republic of China**

Adopted at the 23rd Meeting of the Standing Committee of the Tenth National People's Congress  
on August 27, 2006

## Contents

### Chapter I General Provisions

### Chapter II Application and Acceptance

#### Section 1 Application

#### Section 2 Acceptance

### Chapter III Administrator

### Chapter IV A Debtor's Property

### Chapter V Expenses for Bankruptcy Proceedings and Debts Incurred for the Common Good of Creditors

### Chapter VI Declaration of Claims

### Chapter VII Creditors' Meeting

#### Section 1 General Provisions

#### Section 2 The Creditors' Committee

### Chapter VIII Reorganization

#### Section 1 Application for and Period of Reorganization

#### Section 2 Formulation of and Approval for a Reorganization Plan

#### Section 3 Implementation of a Reorganization Plan

### Chapter IX Compromise

### Chapter X Bankruptcy Liquidation

#### Section 1 Bankruptcy Declaration

#### Section 2 Realization and Distribution

#### Section 3 Termination of the Procedure for Bankruptcy

### Chapter XI Legal Liability

## Chapter XII Supplementary Provisions

### Chapter I General Provisions

Article 1 This Law is enacted with a view to regulating the procedure for enterprise bankruptcy, fairly settling claims and debts, safeguarding the lawful rights and interests of creditors and debtors, and maintaining the order of the socialist market economy.

Article 2 Where an enterprise legal person cannot pay off his debts due and his assets are not enough for paying off all the debts, or he apparently lacks the ability to pay off his debts, the debts shall be liquidated according to the provisions of this Law.

Where an enterprise legal person is under the circumstances as specified in the preceding paragraph or he has apparently forfeited the ability to pay off his debts, he may undergo reorganization according to the provisions of this Law.

Article 3 A bankruptcy case shall be under the jurisdiction of the people's court at the place where the debtor resides.

Article 4 Where there are no provisions in this Law to govern the procedure for hearing a bankruptcy case, the relevant provisions of the Civil Procedure Law shall be applicable.

Article 5 Once the procedure for bankruptcy are initiated according to this Law, it shall come into effect in respect of the debtor's property outside of the territory of the People's Republic of China.

Where a legally effective judgment or ruling made on a bankruptcy case by a court of another country involves a debtor's property within the territory of the People's Republic of China and the said court applies with or requests the people's court to recognize and enforce it, the people's court shall, according to the relevant international treaties that China has concluded or acceded to or on the basis of the principle of reciprocity, conduct examination thereof and, when believing that the said judgment or ruling does not violate the basic principles of the laws of the People's Republic of China, does not jeopardize the sovereignty and security of the State or public interests, does not undermine the legitimate rights and interests of the creditors within the territory of the People's Republic of China, decide to recognize and enforce the judgement or ruling.

Article 6 When trying a bankruptcy case, the people's court shall, in accordance with law, guarantee the legitimate rights and interests of the employees of the enterprise and investigate the business managers of the bankruptcy enterprise for their legal liabilities.

### Chapter II Application and Acceptance

#### Section 1 Application

Article 7 Where a debtor is under the circumstances as specified in Article 2 of this Law, he may make an application to the people's court for reorganization, compromise or bankruptcy liquidation.

Where the debtor cannot pay off his debts due, the creditor may make an application to the people's court for the debtor's reorganization or bankruptcy liquidation.

Where an enterprise legal person has been dissolved but has not started or completed liquidation and he does not have enough assets to pay off his debts, the person responsible for liquidation according to law shall make an application to the people's court for bankruptcy liquidation.

Article 8 For applying to a people's court for bankruptcy, an Application for Bankruptcy and the related evidence shall be submitted to it.

The following matters shall clearly be stated in the Application for Bankruptcy:

- (1) a basic introduction to the applicant and the defending party of the application;
- (2) purposes of application;
- (3) facts and grounds of the application; and
- (4) other matters that the people's court deems necessary to state.

Where a debtor makes an application, he shall submit to the people's court statements on his financial position, a complete list of his debts, a complete list of his claims, the related financial statements, a plan for employee arrangements and payment of his employees' wages and social insurance premiums.

Article 9 Before the people's court accepts an application for bankruptcy, the applicant may request for withdrawal of the application.

## Section 2 Acceptance

Article 10 Where a creditor makes an application for bankruptcy, the people's court shall, within five days from the date it receives the application, notify the debtor concerned. Where the debtor has objections to the application, he shall put forward his objections to the people's court within seven days from the date he receives notification from the people's court. The people's court shall decide whether or not to accept the case within 10 days at the expiration of the period for raising objections.

Except for the circumstances as specified in the preceding paragraph, the people's court shall decide whether or not to accept an application for bankruptcy within 15 days from the date it receives the application.

Under special circumstances where the time limit for deciding whether to accept a case, as specified in the preceding two paragraphs, needs to be extended, it may be extended for another 15 days upon approval by the people's court at the next higher level.

Article 11 Where the people's court decides to accept an application for bankruptcy, it shall serve such decision on the applicant within five days from the date it makes the decision.

Where the application is made by a creditor, the people's court shall serve its decision on the debtor within five days from the date it makes the decision. The debtor shall, within 15 days from the date the decision is served, submit to the people's court statements on his financial position, a complete list of his debts, a complete list of his claims, the related financial statements and payment of his employees' wages and social insurance premiums.

Article 12 Where the people's court decides not to accept an application for bankruptcy, it shall serve the decision on the applicant within five days from the date it makes the decision and explain the reasons why. Where the applicant is dissatisfied with the decision, he may, within 10 days from the date the decision is served, file an appeal with the people's court at the next higher level.

Where during the period from acceptance of an application for bankruptcy to declaration of bankruptcy, the people's court finds through examination that the debtor is not under the circumstances as specified in Article 2 of this Law, it may decide to reject the application. Where the applicant is dissatisfied with the decision, he may, within 10 days from the date the decision is served, file an appeal with the people's court at the next higher level.

Article 13 When the people's court decides to accept an application for bankruptcy, it shall designate an administrator at the same time.

Article 14 The people's court shall, within 25 days from the date it decides to accept an application for bankruptcy, it shall notify the creditors already known and announce its decision.

The following matters shall clearly be stated in the notification and announcement:

- (1) titles or names of the applicant and the defending party of the application;
- (2) the time when the people's court accepts the application for bankruptcy;
- (3) period, place and points for attention with respect to declaration of claims;
- (4) title or name of the administrator and the office address;
- (5) demand made by the administrator upon the debtors or property holders of the debtor for paying off the debts or delivering the property;
- (6) the time and place for the first creditors' meeting to be held; and
- (7) other matters that the people's court deems it necessary to notify of and announce.

Article 15 During the period from the date when the decision made by the people's court to accept an application for bankruptcy is served on the debtor to the date when the procedure for bankruptcy is concluded, the persons related to the debtor shall fulfill the following obligations:

- (1) properly preserving the property, seals, account books, documents, etc. which are in their possession and under their management;

- (2) proceeding with the work according to the requirements of the people's court and the administrator, and truthfully answering their inquiries;
- (3) attending the creditors' meetings as non-voting participants and truthfully answering the creditors' inquiries;
- (4) remaining at their domiciles, unless otherwise permitted by the people's court; and
- (5) not taking up any post as director, supervisor or senior manager in any other enterprise.

The persons related to the debtor mentioned in the preceding paragraph include the legal representative of an enterprise, which may, upon decision by the people's court, also include the financial managers and business managers of the enterprise.

Article 16 After the people's court accepts an application for bankruptcy, payment of debts made by the debtor to individual creditors shall be invalid.

Article 17 After the people's court accepts an application for bankruptcy, the debtors or property holders of the debtor shall pay off the debts or deliver the property to the administrator.

Where the debtors or property holders of the debtor intentionally pay off the debts or deliver the property to the debtor in violation of the provisions of the preceding paragraph, thus causing losses to creditors, they shall not be freed from the obligation of paying off the debts or delivering the property.

Article 18 After the people's court accepts an application for bankruptcy, the administrator shall have the right to decide to rescind or continue to perform a contract that is concluded before the acceptance yet remains to be fulfilled by both the debtor and the other party and shall notify the other party of his decision. Where the administrator fails to notify the other party within two months from the date when the bankruptcy application is accepted or to give any reply to the exhortation made by the other party with 30 days from the date the exhortation is made, the contract shall be deemed to be rescinded.

Where the administrator decides that performance of the contract be continued, the other party shall comply; however, the other party shall have the right to request the administrator to provide guaranty. Where the administrator refuses to do so, the contract shall be deemed to be rescinded.

Article 19 After the people's court accepts an application for bankruptcy, the measures for preserving the property of the debtor shall be lifted and the procedure for execution shall be suspended.

Article 20 After the people's court accepts an application for bankruptcy, any civil action or arbitration involving the debtor that has been started but has not yet been concluded shall be suspended; however, the action or arbitration can proceed after an administrator takes over the debtor's property.

Article 21 After the people's court accepts an application for bankruptcy, a civil action against the debtor can only be filed with the said people's court.

### Chapter III Administrator

Article 22 The administrator shall be designated by the people's court.

Where the creditors' meeting believes that the administrator cannot perform his duties according to law or impartially or is incompetent to fulfill his duties, the meeting may apply with the people's court for replacement.

The measures for designating administrators and determining their remunerations shall be formulated by the Supreme People's Court.

Article 23 An administrator shall perform his duties according to the provisions of this Law, report on his work to the people's court and be subject to supervision by the creditors' meeting and the creditors' committee.

The administrator shall attend the creditors' meetings as a non-voting participant, reporting on the performance of his duties and answering inquiries.

Article 24 A liquidation team composed of persons of the departments or authorities concerned or a law firm, a certified public accountant firm, a bankruptcy liquidation firm or any other public intermediary agency that is established according to law may serve as an administrator.

The people's court may, in light of the actual conditions of a debtor and after consulting with the public intermediary agency concerned, designate the person who has the necessary professional knowledge and has obtained the qualifications for the practice to serve as an administrator.

A person shall not serve as an administrator, if:

- (1) he has been subjected to criminal punishment for intentional offense;
- (2) his qualification certificate for the relevant practice has been revoked;
- (3) he has an interest in the case; or
- (4) the people's court deems it improper to have him serve as an administrator.

Where the administrator is served by an individual person, he shall purchase the responsibility insurance for the practice.

Article 25 An administrator shall perform the following duties:

- (1) taking over the property, seals, account books, documents and other data of the debtor;
- (2) investigating into the financial position of the debtor and preparing a report on such position;
- (3) deciding on matters of internal management of the debtor;

- (4) deciding on the day-to-day expenses and other necessary expenditures of the debtor;
- (5) deciding, before the first creditors' meeting is held, to continue or suspend the debtor's business;
- (6) managing and disposing of the debtor's property;
- (7) participating in legal actions, arbitrations or any other legal procedure on behalf of the debtor;
- (8) proposing to hold creditors' meetings; and
- (9) performing other duties that the people's court deems that he should.

Where other provisions governing the duties of an administrator are stipulated in this Law, those provisions shall be applicable.

Article 26 If an administrator decides to continue or suspend the business operation of a debtor or if he intends to take any of the actions as specified by the provisions of Article 69 of this Law before the first creditors' meeting is held, the matter shall be subject to approval by the people's court.

Article 27 An administrator shall be hardworking in doing his duties, and shall perform his duties faithfully.

Article 28 An administrator may, upon approval by the people's court, employ the necessary workers.

The remuneration of an administrator shall be determined by the people's court. In case the creditors' meeting has objections to such remuneration, it shall have the right to raise them to the people's court.

Article 29 An administrator shall not resign his post without justifiable reasons. Resignation of an administrator shall be subject to approval by the people's court.

#### Chapter IV A Debtor's Property

Article 30 A debtor's property includes all of the property that belongs to a debtor when the application for bankruptcy is accepted, as well as the property as obtained by the debtor during the period from the time when the application for bankruptcy is accepted to the time when the procedures for bankruptcy are concluded.

Article 31 An administrator shall have the right to request the court to nullify any of the following actions taken within one year before the people's court accepts the application for bankruptcy in respect of the debtor's property:

- (1) transferring the property gratis;



- (2) trading at an obviously unreasonable price;
- (3) providing property guaranty to unsecured debts;
- (4) paying off debts not due; or
- (5) abandoning claims.

Article 32 Within six months before the people's court accepts the application for bankruptcy, if a debtor is under the circumstances as specified in the first paragraph of Article 2 of this Law but chooses to make repayment to individual creditors, the administrator shall have the right to request the people's court to nullify it, except where such individual repayment is beneficial to the debtor's property.

Article 33 The following actions taken in respect of the debtor's property are invalid:

- (1) concealing or transferring the property in order to avoid repayment of debts; and
- (2) fabricating debts or acknowledging unreal debts.

Article 34 Where the property is obtained from the debtor by means of such actions as specified in Article 31, 32 or 33 of this Law, the administrator shall have the right to recover it.

Article 35 Where after the people's court accepts an application for bankruptcy, any of the debtor's capital contributors that fails to fulfill his obligation of capital contribution in full, the administrator shall require the capital contributor to contribute the capital he has subscribed to, irrespective of the time limit set on capital contribution.

Article 36 The administrator shall recover the irregular incomes obtained from the enterprise and the property of the enterprise illegally taken into his possession by a director, supervisor or senior manager of the debtor through taking advantage of his position.

Article 37 After the people's court accepts an application for bankruptcy, the administrator may take back the pledge or lien through paying off the debts or providing a guaranty acceptable to the creditor.

With respect to payment of debts or provision of guaranty as a substitute, as mentioned in the preceding paragraph, if the value of the pledge or lien is lower than the amount of the claim for which the guaranty is provided, the value of the pledge or lien shall be limited to its market value at the time when the pledge or lien was made.

Article 38 After the people's court accepts an application for bankruptcy, the property, which has been taken by a debtor into his possession but which does not belong to the debtor, may be taken back by the obligee of the property through the administrator, unless otherwise provided for by this Law.

Article 39 At the time when the people's court accepts an application for bankruptcy, if the seller has sent the goods to the debtor as the buyer and the latter has neither received the goods nor paid

the money in full, the seller may get back the goods in transit. However, the administrator may pay the money in full and request the seller to deliver the goods.

Article 40 Where a creditor is in debt to the debtor before the application for bankruptcy is accepted, the former may lodge a claim with the administrator for offsetting the debts. However, the debts shall not be offset under any of the following circumstances:

- (1) being in debt to the debtor, he obtains another person's claims against the debtor after the application for bankruptcy is accepted;
- (2) getting into debt to the debtor when he already knows the fact that the debtor is incapable of paying off his debts due or has applied for bankruptcy; unless it is otherwise provided for by law or he gets into debt because of the developments that take place one year before the application for bankruptcy is made; or
- (3) being a debtor to the debtor, he obtains the claims from the debtor when he already knows the fact that the debtor is incapable of paying off his debts due or has applied for bankruptcy; unless it is otherwise provided for by law or he obtains the claims because of the developments that take place one year before the application for bankruptcy is made.

#### Chapter V Expenses for Bankruptcy Proceedings and Debts Incurred for the Common Good of Creditors

Article 41 The following expenses that are entailed after the people's court accepts an application for bankruptcy are expenses for bankruptcy proceedings:

- (1) litigation cost involved in a bankruptcy case;
- (2) expenses for management, realization and distribution of the debtor's property; and
- (3) expenses involved in the administrator's performance of his duties and paid for his remuneration and expenses for the employees recruited.

Article 42 The following debts incurred after the people's court accepts an application for bankruptcy are debts incurred for the common good of creditors:

- (1) debts incurred because the administrator or debtor requests the other party to fulfill a contract which both parties have failed to fulfill;
- (2) debts to the debtor through spontaneous agency on the debtor's property;
- (3) debts incurred as a result of the debtor's unjust enrichment;
- (4) remunerations for work and social insurance premiums payable for sustaining the debtor's business operations, and other debts arising therefrom;

(5) debts incurred by the administrator or an employee who causes losses to another person in the course of performing his duties; and

(6) debts incurred by the debtor's property for causing losses to another person.

Article 43 The expenses for bankruptcy proceedings and the debts incurred for the common good of creditors shall be paid off with the debtor's property at any time.

Where the debtor's property is not enough for paying off all the expenses for bankruptcy proceedings and the debts incurred for the common good of creditors, the former shall be paid off first.

Where the debtor's property is not enough for paying off all the expenses for bankruptcy proceedings or the debts incurred for the common good of creditors, such payment shall be made on a pro rata basis.

Where the debtor's property is not enough for paying off the expenses for bankruptcy proceedings, the administrator shall request the people's court to conclude the procedure for bankruptcy. The people's court shall, with 15 days from the date it receives the request, decide to conclude the procedure for bankruptcy and announce the decision.

## Chapter VI Declaration of Claims

Article 44 As of the time when the people's court accepts an application for bankruptcy, the creditor that enjoys the claims against the debtor may exercise his right in respect of his claims according to the procedures as prescribed by this Law.

Article 45 After accepting an application for bankruptcy, the people's court shall specify the time limit for a creditor to declare claims. Such time limit, calculated from the date when the people's court announces its acceptance of the application for bankruptcy, shall be not less than 30 days at least but not more than three months at the most.

Article 46 All claims undue shall be deemed to be due at the time when the application for bankruptcy is accepted.

Beginning from the time when the application for bankruptcy is accepted, calculation of the interest on claims shall be stopped.

Article 47 A creditor may declare his claims which are attached with certain conditions or time limit and the claims for which an action or arbitration is pending.

Article 48 A creditor shall, within the time limit specified by the people's court for declaration of his claims, declare his claims to the administrator.

It is not necessary for the debtor to declare the wages, subsidies for medical treatment, injuries and disability and the pensions for the disabled and the families of the deceased which he owes, the

basic old-age insurance premiums and medical insurance premiums which he owes and fails to enter in the employees' personal accounts, and the compensations which should be paid to the employees as prescribed by relevant laws and administrative regulations, for all of which the administrator shall compile a list after investigation and have it published. Where an employee has objections to what is recorded in the list, he may request the administrator to make corrections; and if the administrator refuses to do so, the employee may file an action with the people's court.

Article 49 When a creditor declares his claims, he shall make a written statement on the amount of his claims and on whether there is any property guaranty, and present the relevant evidence. If the claims declared are joint-and-several claims, he shall give an explanation thereof.

Article 50 Joint-and-several creditors may choose one from among them to declare their claims on their behalf or declare their claims jointly.

Article 51 Where the debtor's guarantor or any joint-and-several debtor has paid off the debts on behalf of the debtor, he may declare his claims on the basis of his right of recourse to the debtor.

Where the debtor's guarantor or any joint-and-several debtor has not paid off the debts on behalf of the debtor, he may declare his claims on the basis of his future right of recourse to the debtor, unless the creditors have declared all their claims to the administrator.

Article 52 Where it is ruled that the procedure as prescribed in this Law should be applicable to more than one joint-and-several debtor, their creditors shall have the right to declare all of their claims in each of the bankruptcy cases.

Article 53 Where an administrator or debtor revokes a contract according to the provisions of this Law, the other party may declare his claims on the basis of his right to compensation for the damages caused by the revocation.

Article 54 Where it is ruled that a debtor who is the entrusting party of an entrustment contract should be governed by the procedure as prescribed in this Law and the entrusted party, without knowledge of the fact, continues to deal with the entrusted business, the entrusted party may declare his claims on the basis of the right of claim derived therefrom.

Article 55 Where it is ruled that a debtor being the producer of a negotiable instrument should be governed by the procedures as prescribed in this Law, the payer of the negotiable instrument continues his payment or acceptance, the payer may declare his claims on the basis of the right of claim derived therefrom.

Article 56 Where a creditor fails to declare his claims within the time limit for declaration of claims as specified by the people's court, he may declare such claims afterwards before distribution of the bankruptcy property in the final installment. However, if the property has been distributed earlier, no more distribution shall be made to him. The expenses for examining and confirming the claims declared afterwards shall be borne by the party that makes such declaration.

Where a creditor fails to declare his claims according to the provisions of this Law, he shall not exercise his right according to the procedure as prescribed in this Law.

Article 57 After receiving the materials for declaration of claims, the administrator shall have them registered, examine the claims declared and fill out a form of claims.

The form of claims and the materials for declaration of claims shall be preserved by the administrator for reference by the interested parties.

Article 58 The form of claims as filled out according to the provisions of Article 57 of this Law shall be submitted to the first creditors' meeting for checking.

Where the debtor and creditor have no objections to what is recorded in the form of claims, the people's court shall make a ruling on its confirmation.

Where the debtor or creditor has objections to what is recorded in the form of claims, he may file an action with the people's court that has accepted the application for bankruptcy.

## Chapter VII Creditors' Meeting

### Section 1 General Provisions

Article 59 A creditor declaring his claims according to law is a member of the creditors' meeting and has the right to attend the meetings of the creditors and enjoy the right to vote.

A creditor whose claims are not confirmed is not entitled to exercise the right to vote unless the people's court can temporarily decide on the amount of his claims for the sake of his exercise of such right.

Where a creditor secured by the specific property of the debtor and that has not given up his priority right to be repaid shall not enjoy the right to vote on matters as specified in Subparagraphs (7) and (10) under the first paragraph of Article 61 of this Law.

A creditor may entrust his agent with the task of attending the creditors' meeting and exercising the right to vote. To attend the creditors' meeting, the agent shall submit a letter of power of attorney to the people's court or to the chairman of the creditors' meeting.

A creditors' meeting shall be attended by representatives of the employees and of the trade union of the debtor, who may express their views on relevant issues.

Article 60 There shall be a chairman of the creditors' meeting, who shall be designated by the people's court from among the creditors with the right to vote.

The chairman of the creditors' meeting shall preside over such meetings.

Article 61 The creditors' meeting shall exercise the following functions and powers:

(1) checking the claims;

- (2) applying with the people's court for replacing the administrator and examining the expenses and remuneration of the administrator;
- (3) supervising the work of the administrator;
- (4) selecting and replacing members of the creditors' committee;
- (5) deciding on whether to have the debtor continue or discontinue his business operations;
- (6) adopting plans for reorganization;
- (7) adopting agreements for compromise;
- (8) adopting plans for management of the debtor's property;
- (9) adopting plans for realizing the bankruptcy property into money;
- (10) adopting plans for distribution of the bankruptcy property; and
- (11) other functions and powers that the people's court deems that the creditors' meeting should exercise.

The creditors' meeting shall keep minutes of the resolutions made on the matters discussed.

Article 62 The first creditors' meeting shall be convened by the people's court within 15 days before the expiration date of the time limit for declaration of claims.

Subsequent creditors' meetings may be held when the people's court deems it necessary, or when the administrator, the creditors' committee, or a creditor holding one quarter or more of the total amount of claims proposes to the chairman of the creditors' meeting that such a meeting be held.

Article 63 For convening a creditors' meeting, the administrator shall notify the known creditors 15 days in advance.

Article 64 A resolution made by the creditors' meeting shall be adopted by more than half of the creditors that attend the meeting, have the right to vote, and represent half or more of the total amount of the unsecured claims, unless otherwise provided for by this Law.

Where a creditor believes that a resolution adopted at a creditors' meeting is at variance with the provisions of law or undermines his interests, he may, within 15 days from the date when the resolution is made at the creditors' meeting, plead with the people's court to decide to revoke the resolution and order the creditors' meeting to have a resolution remade according to law.

A resolution adopted at the creditors' meeting shall be binding on all creditors.

Article 65 Where any of the matters specified in Subparagraphs (8) and (9) under the first paragraph of Article 61 of this Law is not adopted through voting at the creditors' meeting, it shall be subject to decision by the people's court.

Where the matter as specified in Subparagraph (10) under the first paragraph of Article 61 of this Law is still not adopted by a second voting at the creditors' meeting, it shall be subject to decision by the people's court.

The decisions as specified in the preceding two paragraphs may be announced by the people's court at the creditors' meeting or notified to the creditors.

Article 66 Where a creditor is dissatisfied with the decision made by the people's court according to the first paragraph in Article 65 of this Law, or where the creditors representing half or more of the total unsecured claims are dissatisfied with the decision made by the people's court according to the second paragraph in Article 65 of this Law, he or they may, within 15 days from the date when the decision is announced or when the notification thereof is received, apply with the said people's court for review. Execution of the decision shall not be discontinued during the period of review.

## Section 2 The Creditors' Committee

Article 67 The creditors' meeting may decide to establish a creditors' committee. The creditors' committee shall be composed of the creditors' representatives who are selected by the creditors' meeting and a representative from among the employees of the debtor or from the trade union of the debtor. The members of the creditors' committee shall not exceed nine persons in number.

The members of the creditors' committee shall be subject to confirmation by decision of the people's court in writing.

Article 68 The creditors' committee shall perform the following functions and powers:

- (1) supervising the management and disposition of the debtor's property;
- (2) supervising the distribution of the bankruptcy property;
- (3) proposing the convening of a creditors' meeting; and
- (4) other functions and powers as entrusted by the creditors' meeting.

When performing its functions and powers, the creditors' committee shall have the right to require the administrator and the relevant employee of the debtor to give an explanation of the matters that fall within the scope of his functions and powers or provide relevant documents.

Where the administrator or the relevant employee of the debtor, in violation of the provisions of this Law, refuses to accept supervision, the creditors' committee shall have the right to plead with the people's court to make a decision on the matters subject to its supervision, and the latter shall make the decision within five days.

Article 69 Before doing any of the following, the administrator shall report to the creditors' committee in a timely manner:

- (1) transferring of the rights and interests of such immovables as land and houses;

- (2) transferring of such property rights as the right to prospecting mineral deposits, the right to mining and the intellectual property right;
- (3) transferring of all the inventory or business operation;
- (4) borrowing of money;
- (5) creating of security on property;
- (6) transferring of claims and securities;
- (7) executing the contract left unfulfilled by the debtor and the other party;
- (8) waivering of rights;
- (9) withdrawing of a pledge; and
- (10) other acts for disposing of the property that has a vital bearing on the creditor's interests.

Where there is no such creditors' committee, the administrator shall, before executing what is specified in the preceding paragraph, report to the people's court in a timely manner.

## Chapter VIII Reorganization

### Section 1 Application for and Period of Reorganization

Article 70 A debtor or creditor may, according to the provisions of this Law, directly apply with the people's court for having the debtor reorganized.

Where a creditor applies for putting his debtor into bankruptcy liquidation, the debtor or his capital contributors whose capital contribution makes up one-tenth or more of the debtor's registered capital may, after the people's court accepts the application for bankruptcy and before it declares the debtor bankrupt, apply with the people's court for reorganization.

Article 71 Where upon examination, the people's court deems that an application for reorganization conforms to the provisions of this Law, it shall rule that the debtor should undergo reorganization and shall make the matter known to the public.

Article 72 The period of reorganization shall last from the date when the people's court rules that the debtor should undergo reorganization to the date when the procedure for reorganization is terminated.

Article 73 During the period of reorganization, the debtor may, through his application and upon approval granted by the people's court, manage his property and business operations on his own under the supervision of an administrator.



Under conditions as specified in the preceding paragraph, the administrator that has taken over the property and business operations from the debtor in accordance with the provisions of this Law shall hand over the property and business operations to the debtor, and the functions and powers to be exercised by the administrator as specified by this Law shall be exercised by the debtor.

Article 74 The administrator that takes charge of the property and business operations may appoint a business manager of the debtor to take care of the business operations.

Article 75 During the period of reorganization, the exercise of the security right over the specific property of a debtor shall be suspended. However, in the case of possible damage or marked depreciation of value of the security, which may impair the secured creditor's right, the secured creditor may apply with the people's court for resuming the exercise of his security right.

During the period of reorganization, the debtor or administrator that borrows money for carrying on business may create a security on the loan.

Article 76 In the case of another person's property that is legally taken into possession by a debtor, if the obligee requests to take the property back during the period of reorganization, the terms previously agreed upon shall be met.

Article 77 During the period of reorganization, no capital contributor of a debtor may request for distribution of profits derived from his investment.

During the period of reorganization, no director, supervisor or senior manager of a debtor may transfer to a third party the equity of the debtor he holds, unless with the consent of the people's court.

Article 78 Under one of the following circumstances during the period of reorganization, the people's court shall, upon request by an administrator or an interested party, rule that the reorganization procedure should be terminated and shall declare the debtor bankrupt:

- (1) where the business operations and financial position of the debtor continue to deteriorate and there is no hope of retrieval;
- (2) where the debtor indulges in fraud or maliciously decreases his property, or commits any other act which is obviously disadvantageous to his creditors; or
- (3) where the debtor commits such an act as to make it impossible for the administrator to perform his duties.

## Section 2 Formulation of and Approval for a Reorganization Plan

Article 79 A debtor or administrator shall, within six months from the date when the people's court rules that the debtor should undergo reorganization, submit a draft plan for reorganization to the people's court and the creditors' meeting at the same time.

Upon request made by a debtor or administrator before the expiration of the period as specified in the preceding paragraph and on justifiable grounds, the people's court may rule that the period should be extended for three months.

Where a debtor or administrator fails to submit a draft plan for reorganization on schedule, the people's court shall rule that the procedure for reorganization should be terminated and declare the debtor bankrupt.

Article 80 Where it is the debtor who manages his own property and business operations, a draft plan for reorganization shall be formulated by the debtor.

Where it is the administrator who is in charge of management of the property and business operations, the draft plan for reorganization shall be formulated by the administrator.

Article 81 A draft plan for reorganization shall contain the following:

- (1) the debtor's plan for business operations;
- (2) classification of the creditors' claims;
- (3) the plan for the adjustment of the claims;
- (4) the plan for payment of the claims;
- (5) the period of time for implementing the reorganization plan;
- (6) the period of time for supervising the implementation of the reorganization plan; and
- (7) other plans conducive to the debtor's reorganization.

Article 82 For the creditors holding the following categories of the claims to attend the creditors' meeting at which the draft plan for reorganization is to be discussed, they shall be grouped according to the following categories of the claims when a vote is taken on the draft plan for reorganization:

- (1) the secured claims on the debtor's specific property;
- (2) the wages, subsidies for medical treatment, injuries and disability and the pensions for the disabled and the families of the deceased which the debtor owes, the basic old-age insurance premiums and the basic medical insurance premiums which he owes and fails to enter in the employees' personal accounts, and the compensations which should be paid to the employees as prescribed by relevant laws and administrative regulations;
- (3) the taxes the debtor fails to pay; and
- (4) the common claims.

For a vote on the draft plan for reorganization, the people's court may, when necessary, decide to form a group of small-claim creditors under the category of the common claims.

Article 83 It shall not be stipulated in a reorganization plan that the social insurance premiums which a debtor fails to pay, other than the ones which are specified under Subparagraph (2) in the first paragraph of Article 82 of this Law should be reduced or exempted. The creditor involved in the said ones shall not take part in the voting of the draft plan for reorganization.

Article 84 The people's court shall, within 30 days from the date when it receives a draft plan for reorganization, convene a creditors' meeting for a vote on the draft.

When more than half of the creditors in voting group for the same category of claims who are present at the creditors' meeting agree to a draft plan for reorganization and they represent two-thirds or more of the total amount of the said category of claims, the draft shall be deemed to be adopted by the group.

The debtor or administrator shall give an explanation of the draft plan for reorganization at the creditors' meeting and answer inquiries.

Article 85 Representatives of the capital contributors of a debtor may, as non-voting participants, attend the creditors' meeting to discuss a draft plan for reorganization.

Where a draft plan for reorganization involves the adjustment of the rights and interests of capital contributors, a group of capital contributors shall be formed to vote on the matter.

Article 86 When all the voting groups agree to adopt a draft plan for reorganization, the draft shall be deemed to be adopted.

The debtor or administrator shall, within 10 days from the date when the plan for reorganization is adopted, apply with the people's court for approval of the plan. Where upon examination, the people's court deems that the application complies with the provisions of this Law, it shall, within 30 days from the date when it receives the application, decide to grant approval, terminate the procedure for reorganization and announce it.

Article 87 Where a draft plan for reorganization is not adopted by some of the voting groups, the debtor or administrator may consult with those groups. The said groups may take another vote after consultation. The result of consultation shall not damage the interests of the other voting groups.

Where a voting group that does not adopt a draft plan for reorganization refuses to take another vote on it or the draft plan is not adopted even by a second vote but it meets the following conditions, the debtor or administrator may apply with the people's court for approval of the draft plan:

(1) according to the draft plan for reorganization, the claims as specified in Subparagraph (1) under the first paragraph of Article 82 of this Law will be paid in full as far as the specific property is concerned, the losses caused by postponed payment will be compensated for in a fair manner, and the secured interests will not be substantially impaired, or the voting groups concerned have adopted the draft plan for reorganization;

(2) according to the draft plan for reorganization, the claims as specified in Subparagraphs (2) and (3) under the first paragraph of Article 82 of this Law will be paid in full, or the voting groups concerned have adopted the draft plan for reorganization;

(3) according to the draft plan for reorganization, the proportion for repayment of the common claims will not be lower than that as allotted under the procedures for bankruptcy liquidation at the time when the draft plan is submitted for approval, or the voting groups concerned have adopted the draft plan;

(4) in the draft plan for reorganization, the rights and interests of capital contributors are adjusted in a fair and impartial manner, or the group of capital contributors has adopted the draft plan;

(5) in the draft plan for reorganization, members of the same voting group are treated fairly, and the order arranged therein for payment of the claims does not contravene the provisions of Article 113 of this Law; and

(6) the debtor's plan for business operations is feasible.

Where upon examination, the people's court deems that the draft plan for reorganization complies with the provisions of the preceding paragraph, it shall, within 30 days from the date when it receives the application, decide to grant approval, terminate the procedure for reorganization and announce it.

Article 88 Where a draft plan for reorganization is not adopted and is not approved according to the provisions of Article 87 of this Law, or a draft plan, though adopted, is not approved, the people's court shall rule that the procedure for reorganization should be terminated and shall declare the debtor bankrupt.

### Section 3 Implementation of a Reorganization Plan

Article 89 A reorganization plan shall be implemented under the debtor's charge.

After the people's court decides to approve a reorganization plan, the administrator that has taken over the management of the property and business operations shall hand over the property and business operations to the debtor.

Article 90 Beginning from the date when the people's court decides to approve a reorganization plan, the administrator shall supervise the implementation of the plan within the period for supervision as specified in the plan.

Within the period when being supervised, the debtor shall report to the administrator on the implementation of his reorganization plan and his financial position.

Article 91 At the expiration of the period when being supervised, the administrator shall submit a report on supervision to the people's court. From the date when the report on supervision is submitted, the administrator's duty of supervision is terminated.

Any interested party to the reorganization plan shall have the right to consult the report on supervision submitted by the administrator to the people's court.

Upon application by the administrator, the people's court may decide to extend the period for supervision over the implementation of a reorganization plan.

Article 92 The reorganization plan approved by decision of the people's court shall have a binding force on the debtor and all the creditors.

Where a creditor fails to declare his claims according to the provisions of this Law, he shall not exercise his right when the reorganization plan is being implemented; however, when the implementation of the plan is concluded, the creditor may exercise his right in compliance with the conditions for payment of claims of the same category as specified in the reorganization plan.

The right enjoyed by a creditor against the debtor's guarantor and all the joint-and-several debtors shall not be affected by the reorganization plan.

Article 93 Where a debtor cannot or fails to implement a reorganization plan, the people's court shall, upon request of the administrator or interested party, decide to terminate the implementation of the plan and declare the debtor bankrupt.

Where the people's court decides to terminate the implementation of a reorganization plan, the commitment taken by the creditors on adjustment of the claims in the plan shall be invalidated. However, the repayment received by the creditors due to implementation of the plan shall remain effective, and the part of the claims for which no repayment has been paid shall be regarded as bankruptcy claims.

The creditors as specified in the preceding paragraph may continue to join the distribution, only when the other creditors in the same sequential order receive the same proportion of repayment.

Under the circumstances as specified in the first paragraph of this Article, the guaranty provided for implementation of the reorganization plan shall continue to be effective.

Article 94 With respect to the debts that are reduced or exempted according to a reorganization plan, the debtor shall cease to be liable for repayment upon complete implementation of the reorganization plan.

## Chapter IX Compromise

Article 95 A debtor may, according to the provisions of this Law, directly apply with the people's court for compromise; and he may do so after the people's court accepts the application for bankruptcy and before it declares the debtor bankrupt.

To apply for compromise, the debtor shall present the draft of a compromise agreement.

Article 96 Where upon examination, the people's court deems that the application for compromise conforms to the provisions of this Law, it shall rule on a compromise, announce it and hold a creditors' meeting at which to discuss the draft of a compromise agreement.

The creditor secured by the specific property of the debtor may exercise his right from the date when the people's court rules in favor of compromise.

Article 97 A resolution on a compromise agreement shall be adopted at the creditors' meeting with the consent of more than half of the creditors who are present at the meeting and who have the right to vote, represent two-thirds or more of the total amount of unsecured claims.

Article 98 Where a compromise agreement is adopted at the creditors' meeting, it shall be subject to decision by the people's court to confirm it and terminate the procedure for compromise, and the people's court shall announce the matter. The administrator shall hand over the property and business operations to the debtor and submit to the people's court a report on the performance of his duties.

Article 99 Where the draft of a compromise agreement is not adopted at the creditors' meeting, or the draft, though adopted at the meeting, is not confirmed by the people's court, the people's court shall decide to terminate the procedure for compromise and declare the debtor bankrupt.

Article 100 A compromise agreement that is confirmed by the people's court shall have a binding force on the debtor and all the creditors involved in the compromise.

A creditor involved in the compromise refers to a party that, at the time when the people's court accepts the application for bankruptcy, holds unsecured claims against the debtor.

Where a creditor involved in the compromise fails to declare his claims according to the provisions of this Law, he shall not exercise his right during the period when the compromise agreement is being honored. However, after the complete implementation of the compromise agreement, he may exercise his right according to the conditions for repayment as stipulated by the compromise agreement.

Article 101 The right enjoyed by the creditor in favor of the compromise against the debtor's guarantor and joint-and-several debtors shall not be affected by the compromise agreement.

Article 102 A debtor shall pay off his debts according to the conditions stipulated by the compromise agreement.

Article 103 With respect to a compromise agreement that is established through fraud or other illegal acts on the part of a debtor, the people's court shall decide to invalidate it and declare the debtor bankrupt.

Under the circumstances as specified in the preceding paragraph, the payment that a creditor involved in the compromise receives due to the honoring of the agreement shall not be returned, provided that it is in the same proportion as that received by the other creditors.

Article 104 Where a debtor cannot or fails to honor a compromise agreement, the people's court shall, upon request by the creditor involved in the compromise, decide to terminate the honoring of the compromise agreement and declare the debtor bankrupt.

Where the people's court decides to terminate the honoring of a compromise agreement, the commitment on adjustment of the claims made by the creditor involved in the compromise shall

be invalidated. However, the repayment received by the said creditor due to the honoring of the compromise agreement shall remain effective and the part of the claims involved in the compromise that has not been paid shall be the bankruptcy claims.

The creditor as specified in the preceding paragraph may continue to join the distribution, only when the payment received by the other creditors reaches the same proportion.

Under the circumstances as specified in the first paragraph of this Article, the guaranty provided for the honoring of a compromise agreement shall remain effective.

Article 105 When after the people's court accepts an application for bankruptcy, the debtor and all the creditors themselves conclude an agreement on settlement of the claims and debts, they may request the court to decide to confirm the agreement and terminate the procedure for bankruptcy.

Article 106 With respect to the debts that are to be reduced or exempted according to a compromise agreement, the debtor shall cease to be liable for repayment from the time when the compromise agreement is completely honored.

## Chapter X Bankruptcy Liquidation

### Section 1 Bankruptcy Declaration

Article 107 Where the people's court declares a debtor bankrupt according to the provisions of this Law, it shall, within five days from the date when the decision thereon is made, serve it on the debtor and the administrator and shall, within 10 days from the said date, notify the known creditors and announce the matter.

After a debtor is declared bankrupt, he is known as the bankrupt, his property is known as the bankruptcy property, and the claims established against the debtor at the time when the people's court accepts an application for bankruptcy is known as bankruptcy claims.

Article 108 Under one of the following circumstances prior to declaration of bankruptcy, the people's court shall decide to terminate the procedure for bankruptcy and announce it:

- (1) where a third party provides a full amount of guaranty to, or repays all the debts due for, the debtor; or
- (2) where the debtor has repaid all the debts due.

Article 109 A creditor secured by the specific property of the bankrupt shall enjoy the priority in being repaid with the specific property.

Article 110 Where when a creditor enjoying the priority as specified in the provisions of Article 109 of this Law exercises the priority to repayment but is not repaid in full, the un-repaid part shall be taken as common claims. The claims of a creditor that abandons the priority right to repayment shall be taken as common claims.

## Section 2 Realization and Distribution

Article 111 An administrator shall draw up a realization plan for bankruptcy property in time and submit it to the creditors' meeting for discussion.

The administrator shall, according to the realization plan for bankruptcy property that has been adopted at the creditors' meeting or that has been decided on by the people's court according to the provisions of the first paragraph of Article 65 of this Law, realize the bankruptcy property in a timely manner.

Article 112 Bankruptcy property shall be realized through auction, unless otherwise decided on by the creditors' meeting.

A bankrupt enterprise may be realized as a whole or partially. When an enterprise is being realized, the intangible assets and other property may be realized separately.

With respect to the property which shall not be auctioned or the transfer of which is restricted according to relevant State regulations, it shall be disposed of in a manner as prescribed by the State.

Article 113 The bankruptcy property shall, after the expenses for bankruptcy proceedings are defrayed and the debts incurred for the common good of creditors are repaid first, be liquidated according to the following order:

- (1) the wages, subsidies for medical treatment, injuries and disability and the pensions for the disabled and the families of the deceased which the bankrupt owes, the basic old-age insurance premiums and the basic medical insurance premiums which he owes and fails to enter in the employees' personal accounts, and the compensations which should be paid to the employees as prescribed by relevant laws and administrative regulations;
- (2) the social insurance premiums which the bankrupt fails to pay, other than the ones which are specified in the preceding subparagraph, and the taxes which the bankrupt fails to pay; and
- (3) the common bankruptcy claims.

Where the bankruptcy property is not sufficient to satisfy the demands for repayment that are arranged in the same group, it shall be distributed on a pro rata basis.

The salaries of the directors, supervisors and senior managers of a bankrupt enterprise shall be calculated on the basis of the average wages of the employees of the enterprise.

Article 114 The bankruptcy property shall be distributed in cash, unless it is otherwise decided on by the creditors' meeting.

Article 115 An administrator shall formulate a plan for distribution of the bankruptcy property in time, and submit it to the creditors' meeting for discussion.

The following items shall clearly be started in a plan for distribution of the bankruptcy property:



- (1) the titles or names and domiciles of the creditors that will share in the distribution of the bankruptcy property;
- (2) the amount of the claims that will share in the distribution of the bankruptcy property;
- (3) the amount of the bankruptcy property available for distribution;
- (4) the order and proportion for, and the amount of the bankruptcy property subject to, distribution; and
- (5) the method for distributing the bankruptcy property.

After the plan for distribution of the bankruptcy property is adopted at the creditors' meeting, it shall be submitted by the administrator to the people's court for confirmation.

Article 116 After a plan for distribution of bankruptcy property is confirmed by decision of the people's court, it shall be executed by the administrator.

Where the administrator has to distribute the bankruptcy property in installments according to the distribution plan, he shall announce the amount of the property and the claims involved in each installment. When the administrator distributes the property in the final installment, he shall make this clear in the announcement and clearly state the matters as specified in the second paragraph of Article 117 of this Law.

Article 117 With respect to a claim to which conditions on its validity or dismissal are attached, the administrator shall preserve the corresponding share of distribution in advance.

With respect to the share of distribution as preserved in advance by the administrator according to the provisions in the preceding paragraph, if, on the day of announcement of distribution in the final installment, conditions on the validity of a claim have not become effective or the conditions on the dismissal of a claim have been fulfilled, it shall be distributed to the other creditors; if on the day mentioned above, the conditions on the validity of a claim have become effective or the conditions on the dismissal of a claim have not been fulfilled, it shall be handed back to the creditors.

Article 118 The shares of the bankruptcy property for distribution that have not been collected by creditors shall be preserved by the administrator. Where a creditor fails to collect his share at the expiration of two months from the date of announcement of distribution in the final installment, he shall be deemed to abandon the right to the share, and the administrator or the people's court shall distribute the preserved share to the other creditors.

Article 119 With respect to a claim that involved in a legal action or pending arbitral decision at the time when the bankruptcy property are distributed, the administrator shall preserve the share involved in distribution in advance. Where a share of distribution remains uncollected at the expiration of two years from the date when the procedure for bankruptcy is terminated, the people's court shall distribute the preserved share to the other creditors.

### Section 3 Termination of the Procedure for Bankruptcy

Article 120 Where a bankrupt has no property available for distribution, the administrator shall request the people's court to decide to terminate the procedure for bankruptcy.

After completion of distribution in the final installment, the administrator shall submit a report on the distribution of the bankruptcy property to the people's court in a timely manner and request the people's court to decide to terminate the procedure for bankruptcy.

The people's court shall, within 15 days from the date when it receives the request of the administrator for terminating the procedure for bankruptcy, make a decision on whether to terminate the procedure. If it decides to terminate the procedure, it shall announce such decision.

Article 121 The administrator shall, within 10 days from the date when the procedure for bankruptcy is terminated and, on the strength of the decision made by the people's court on terminating the procedure for bankruptcy, go through the formalities for cancellation of registration with the authority that originally has the bankrupt registered.

Article 122 An administrator shall cease performing his duties on the day following his completion of the formalities for cancellation of registration, unless a legal action or arbitral decision is still pending.

Article 123 Within two years from the date when the procedures for bankruptcy are terminated according to the provisions of the fourth paragraph in Article 43 or of Article 120 of this Law, a creditor may request the people's court to make an additional distribution according to the plan for distribution of the bankruptcy property under one of the following circumstances:

- (1) such property as should be recovered according to the provisions of Articles 31, 32, 33 or 36 of this Law are discovered; and
- (2) it is discovered that the bankrupt still has other property available for distribution.

Under the circumstances as specified in the preceding paragraph, where the amount of the property is not sufficient for paying the expenses for distribution, no additional distribution shall be made and the said property shall be turned over by the people's court to the State Treasury.

Article 124 The guarantor and the joint-and-several debtors of the bankrupt shall, after termination of the procedure for bankruptcy and according to law, continue to bear the liabilities of payment of the claims that have not been paid according to the procedure for bankrupt liquidation.

## Chapter XI Legal Liability

Article 125 Where a director, supervisor or senior manager, going against his obligations, fails to be honest and hardworking, which leads to bankruptcy of the enterprise where he works, he shall bear civil liability according to law.

The person as specified in the preceding paragraph shall not serve as a director, supervisor or senior manager of any enterprise within three years from the date when the procedure for bankruptcy is terminated.

Article 126 Where, summoned by the people's court, a person who is related to a debtor and is obligated to attend the creditors' meeting as a non-voting participant refuses to attend the meeting without justifiable reasons, the people's court may force him to appear in court and impose on him a fine according to law. Where a person related to a debtor, in violation of the provisions of this Law, refuses to make representations or answer questions, or makes false representations or responds with false answers, the people's court may impose on him a fine according to law.

Article 127 Where a debtor, in violation of the provisions of this Law, refuses to submit to the people's court such data as statements on his financial position, a complete list of his debts, a complete list of his claims, relevant financial statements or payment of his employees' wages or social insurance premiums, or submits untruthful data to it, the people's court may, according to law, impose a fine on the person who is directly responsible.

Where a debtor, in violation of the provisions of this Law, refuses to hand over to the administrator his property, seals or such materials as account books and documents, or fabricates or destroys the evidentiary material concerning his property, thereby making his financial position unclear, the people's court may, according to law, impose a fine on the person who is directly responsible.

Article 128 Where a debtor commits an act as specified in Article 31, 32 or 33, thereby undermining the interests of his creditors, the legal representative of the debtor and the person who is directly responsible shall bear the liability for compensation according to law.

Article 129 Where a person related to a debtor, in violation of the provisions of this Law, leaves the place where he resides, the people's court may give him an admonition or take him into custody, and may concurrently impose a fine on him according to law.

Article 130 Where an administrator fails to perform his duties diligently and faithfully, as is required by the provisions of this Law, the people's court may impose on him a fine according to law; and where losses are caused to a creditor, a debtor or a third party, the administrator shall bear the liability for compensation according to law.

Article 131 Where a violation of the provisions of this Law constitutes a crime, the violator shall be investigated for criminal liability according to law.

## Chapter XII Supplementary Provisions

Article 132 Where after this Law is put into effect, the wages, the subsidies for medical treatment, injuries and disability and the pensions for the disabled and the families of the deceased that the bankrupt owes to his employees, the basic old-age insurance premiums and the basic medical

premiums that the bankrupt owes and fails to enter in the personal accounts of the employees and the compensations that should be paid to the employees as prescribed by relevant laws and administrative regulations--all prior to the date when this Law is promulgated and for which repayment is made according to the provisions of Article 113 of this Law but which are not fully paid, the specific property as prescribed in Article 109 of this Law shall be used to repay the rest before being used to repay the creditor secured by the specific property.

Article 133 Special matters involved in the bankruptcy to be effected among certain State-owned enterprises within the period and scope as are prescribed by the State Council before this Law is put into effect shall be handled according to the relevant regulations of the State Council.

Article 134 Where a commercial bank, securities company, insurance company or any other financial institution is under the circumstances as specified in Article 2 of this Law, the financial regulatory authority under the State Council may lodge an application with the people's court for reorganization or bankruptcy liquidation of the financial institution. Where the financial regulatory authority under the State Council adopts, according to law, such measures as take-over and trusteeship with respect to a financial institution that operates at grave risks, it may apply with the people's court for suspending the proceedings for civil action or execution, wherein the said financial institution is the defendant or the party against whom a judgment or order is being executed.

Where a financial institution goes into bankruptcy, the State Council may, according to the provisions of this Law and other laws, formulate the measures for effecting bankruptcy.

Article 135 The liquidation of the organizations other than the enterprise legal persons as prescribed by other laws, which falls within the category of bankruptcy liquidation, shall be governed, *mutatis mutandis*, by the procedure as prescribed by this Law.

Article 136 This Law shall go into effect as of June 1, 2007. The Law of the People's Republic of China on Enterprise Bankruptcy (for Trial Implementation) shall be annulled simultaneously.

## **Contract Law of the People's Republic of China**

Adopted at the Second Session of the Ninth National People's Congress on March 15, 1999 and promulgated by Order No. 15 of the President of the People's Republic of China on March 15, 1999

### Contents

#### General Provisions

#### Chapter I Common Provisions

#### Chapter II Making of the Contract

#### Chapter III Validity of the Contract

#### Chapter IV Fulfillment of the Contract

#### Chapter V Modification and Transfer of the Contract

#### Chapter VI Termination of Rights and Obligations under the Contract

#### Chapter VII Liability for Breach of Contract

#### Chapter VIII Miscellaneous Provisions Specific Provisions

#### Chapter IX Purchase and Sale Contracts

#### Chapter X Contracts for the Supply and Consumption of Electricity, Water, Gas or Heat

#### Chapter XI Donation Contracts

#### Chapter XII Loan Contracts

#### Chapter XIII Lease Contracts

#### Chapter XIV Contracts for Financial Lease

#### Chapter XV Work Contracts

#### Chapter XVI Construction Project Contracts

#### Chapter XVII Carriage Contracts

#### Chapter XVIII Technology Contracts

#### Chapter XIX Contracts of Deposit

#### Chapter XX Warehousing Contracts

#### Chapter XXI Entrustment Contracts

## Chapter XXII Brokerage Contracts

## Chapter XXIII Intermediation Contracts

## Supplementary Provisions

## General Provisions

## Chapter I Common Provisions

Article 1 This Law is enacted for the purpose of protecting the legitimate rights and interests of the parties to contracts, maintaining the socio-economic order and promoting the socialist modernization.

Article 2 For the purpose of this Law, a contract means an agreement on the establishment, alteration or termination of a civil right-obligation relationship between natural persons, legal persons or other organizations as subjects with equal status.

Agreements on establishing such personal relationships as marriage, adoption and guardianship shall be governed by the provisions of other laws.

Article 3 The parties to the contract have equal legal status, and neither party may impose its will on the other.

Article 4 The parties shall, pursuant to law, have the right to enter into a contract on their own free will, and no unit or person may unlawfully interfere.

Article 5 The parties shall observe the principle of equity in defining each other's rights and obligations.

Article 6 The parties shall observe the principle of good faith in exercising their rights and fulfilling their obligations.

Article 7 The parties shall, in making and fulfilling the contract, abide by laws and administrative regulations and respect social ethics, and may not disrupt the socio-economic order nor impair social and public interests.

Article 8 A legally executed contract has legal binding force on the parties. The parties shall fulfill their obligations as contracted, and may not arbitrarily modify or terminate the contract.

A legally executed contract is protected by law.

## Chapter II Making of the Contract

Article 9 The parties shall, when making a contract, have corresponding capacity for civil rights and civil conduct.

A party may, in accordance with the law, entrust an agent to make a contract.

Article 10 The parties may, when making a contract, use written form, verbal form or any other form.

The written form shall be adopted if laws or administrative regulations so require. The written form shall be adopted if the parties so agree.

Article 11 "Written form" as used herein means any form which renders the information contained in a contract capable of being reproduced in tangible form such as a written agreement, a letter, or electronic text (including telegram, telex, facsimile, electronic data interchange and e-mail).

Article 12 The content of a contract is determined by the parties and generally includes the following clauses:

- (1) designations or names and addresses of the parties;
- (2) the targeted matter;
- (3) quantity;
- (4) quality;
- (5) price or remuneration;
- (6) time, place and mode of fulfillment;
- (7) liability for breach of contract; and
- (8) dispute settlement.

The parties may make contracts with reference to various model contract forms.

Article 13 The parties shall, in making a contract, take the form of offer and acceptance.

Article 14 An "offer" is an intent indication showing the desire to enter into a contract with others, and the intent indication shall conform to the following provisions:

- (1) the content indicated shall be concrete and definite;
- (2) the offeror shall, as is indicated, be bound by the intent indication upon its acceptance by an offeree.

Article 15 An invitation for offer is an intent indication showing the desire to receive offers from others. Mailed or delivered price catalogs, auction announcements, invitations for bid, capital-raising prospectus and commercial advertisements are such invitations for offer.

A commercial advertisement shall, if its content conforms to the provisions regarding offers, be deemed an offer.

Article 16 An offer becomes effective when it reaches the offeree.

If a contract is made in the form of text in electronic data and the receiver has designated a special receiving system to receive such data text, the time at which the text in electronic data enters the designated special system shall be the time of arrival; if no special receiving system is designated, the time at which the text in electronic data first enters any of the receiver's systems shall be the time of arrival.

Article 17 An offer may be withdrawn. The withdrawal notice of an offer shall reach the offeree before or at the same time as the arrival of the offer at the offeree.

Article 18 An offer may be revoked. The revocation notice of an offer shall reach the offeree before the dispatch of an acceptance notice by the offeree.

Article 19 An offer may not be revoked under any of the following conditions:

- (1) the offeror has specified a time limit for the acceptance, or has explicitly indicated in any other manner the irrevocability of the offer;
- (2) there are grounds for the offeree to maintain the irrevocability of the offer and the offeree has made preparations for the fulfillment of the contract.

Article 20 An offer loses its effect under any of the following conditions:

- (1) a rejection notice of the offer has reached the offeror;
- (2) the offeror has revoked the offer pursuant to law;
- (3) when the fixed time limit for acceptance expires, the offeree undertakes no acceptance; or
- (4) the offeree makes a substantial change of the content of the offer.

Article 21 An acceptance is an assent indication of the offeree to an offer.

Article 22 An acceptance shall be made in form of a notice, unless, in light of trade practices or as indicated by the offer, the offeree may indicate the assent by performing an act.

Article 23 An acceptance shall reach the offeror within the time limit fixed by the offer.

If no time limit is fixed by the offer, the acceptance shall reach the offeror in accordance with the following provisions:

- (1) if an offer is made orally, acceptance shall be made promptly unless the parties stipulate otherwise; and
- (2) if an offer is not made orally, the acceptance shall reach the offeror within a reasonable period of time.



Article 24 If an offer is made through a letter or a telegram, the time limit for acceptance commences on the date shown on the letter or on the date the telegram is handed in for dispatch or, if no such date is shown on the letter, from the date shown by the postmark of the letter. If an offer is made by means of instantaneous communications such as telephone or facsimile, the time limit for acceptance commences at the moment that the offer reaches the offeree.

Article 25 A contract is executed at the time when the acceptance becomes effective.

Article 26 The acceptance becomes effective when the acceptance notice reaches the offeror. If an acceptance needs no notice, it becomes effective when an act of acceptance is performed in light of trade practices or as indicated by the offer.

Where a contract is made in the form of text in electronic data, the provisions of Paragraph 2, Article 16 of this Law shall be applicable to the time of arrival of the acceptance.

Article 27 An acceptance may be withdrawn. The withdrawal notice of the acceptance shall reach the offeror before or at the same time as the acceptance notice reaches the offeror.

Article 28 If the offeree makes an acceptance beyond the time limit for acceptance, it shall constitute a new offer unless the offeror notifies the offeree in time that the acceptance is effective.

Article 29 If an offeree makes within the time limit for acceptance an acceptance that could reach the offeror in time under normal conditions but happens to reach the offeror beyond the limit due to other reasons, the acceptance shall be effective notwithstanding unless the offeror notifies the offeree in time that the acceptance is denied due to its delayed arrival.

Article 30 The content of an acceptance shall be consistent with the content of the offer. If the offeree proposes any substantial change to the content of the offer, it shall constitute a new offer. Changes related to the targeted matter, quantity, quality, price or remuneration, duration of fulfillment, place and mode of fulfillment, liability for breach of contract and method of dispute settlement in a contract are substantial changes to the content of an offer.

Article 31 If an acceptance makes non-substantial changes to the content of the offer, the acceptance shall be effective notwithstanding and the content of the contract shall thus be based on the content of the acceptance, unless the offeror indicates in time its objection thereto, or as indicated in the offer, the acceptance may not make any change to the content of the offer.

Article 32 If the parties enter into a contract in the form of a contract instrument, the contract is executed at the time when both parties put their signatures or affix their seals thereto.

Article 33 If the parties enter into a contract in the form of letter or text in electronic data or any other forms, a confirmation instrument may be required prior to the execution of the contract. The contract is executed at the time when the confirmation instrument is signed.

Article 34 The place where the acceptance becomes effective shall be the place where the contract is executed.

Where a contract is made in the form of text in electronic data, the receiver's major place of business is the place of execution of the contract; in the absence of a major place of business, the

receiver's habitual residence is the place of execution of the contract. Where the parties stipulate otherwise, such stipulations shall govern.

Article 35 If the parties adopt the form of a contract instrument to make a contract, the place where both parties sign or stamp the contract is the place of execution of the contract.

Article 36 Where the parties fail to make a contract in written form as provided for by laws or administrative regulations or as agreed by the parties, but a party has already performed the major obligations and the other party has accepted the performance, the contract shall be considered as executed.

Article 37 If, in making a contract in the form of a contract instrument, a party has already performed the major obligations pending the signature or seal and the other party has accepted the performance, the contract shall be considered as executed.

Article 38 If the State gives, according to the needs, mandatory assignments or State purchase orders, the legal persons and other organizations concerned shall conclude contracts in accordance with the rights and obligations provided for by the relevant laws and administrative regulations.

Article 39 If standard clauses are used in making a contract, the party that provides the standard clauses shall determine the rights and obligations between the parties in accordance with the principle of fairness, and shall call in a reasonable manner the other party's attention to the exemptible and restrictive clauses regarding its liability, and give explanations of such clauses at the request of the other party.

"Standard clauses" means the clauses that are formulated in anticipation by a party for the purpose of repeated usage and that are not a result of consultation with the other party in the making of the contract.

Article 40 Standard clauses shall become invalid if they fall under any of the circumstances set forth in Articles 52 and 53 of this Law or if the party that provides the standard clauses exempts itself from the liability, imposes heavier liability on the other party, or precludes the other party from its main rights.

Article 41 If a dispute arises over the understanding of a standard clause, the clause shall be interpreted in accordance with its common understanding. If a standard clause has more than one interpretation, the clause shall be interpreted in a manner unfavorable to the party providing the clause. If a standard clause is inconsistent with the non-standard clause, the non-standard clause shall be adopted.

Article 42 In the making of a contract, the party that falls under any of the following circumstances, causing thus loss to the other party, shall hold the liability for the loss.

- (1) engaging in consultation with malicious intention in name of making a contract;
- (2) concealing intentionally key facts related to the making of the contract or providing false information; or
- (3) taking any other act contrary to the principle of good faith.

Article 43 Neither party may disclose or inappropriately exploit business secrets obtained in the making of a contract no matter the contract is executed or not. The party that discloses or inappropriately exploits the said business secrets causing thus loss to the other party shall hold the liability for the loss.

### Chapter III Validity of the Contract

Article 44 A contract legally executed shall become effective upon execution.

Where a contract may become effective only after the completion of approval and registration procedure according to the provisions of laws and administrative regulations, such provisions shall govern.

Article 45 The parties may agree to attach conditions on the validity of the contract. A contract with collateral conditions on its entry into effect shall become effective upon the fulfillment of the conditions. A contract with collateral conditions on its dissolution shall lose its validity upon the fulfillment of the conditions.

Where either party, for the sake of its own interests, unjustifiably prevents the fulfillment of the aforesaid conditions, the conditions shall be deemed as fulfilled; where either party unjustifiably hastens the fulfillment of the conditions, the conditions shall be deemed as not fulfilled.

Article 46 The parties may agree to attach a time limit for the entry into effect of a contract. A contract with an attached time limit for its entry into effect shall become effective upon expiry of the time limit. A contract attached with a time limit for its termination shall lose its effect upon expiry of the time limit.

Article 47 A contract entered into by a person with limited civil capacity may become valid only after ratification by his legal agent. However, a contract of such kind which is purely profit-making or the making of which is compatible to the age, intelligence and mental health of the person concerned needs no ratification by his legal agent.

The counterpart may urge the legal agent to give ratification within one month. Where the legal agent does not respond, the non-response shall be deemed a refusal of ratification. Pending the ratification, the bona fide counterpart has the right to rescind. The rescission shall be made by a notice.

Article 48 A contract that is entered into by an actor without the right of agency, in excess of the right of agency or beyond the expiration of the right of agency, in the name of a principal and without ratification by the principal, shall have no binding force on the principal, and the actor shall bear the responsibility therefor.

The counterpart may urge the principal to give ratification of the contract within one month. Where the principal does not respond, the non-response shall be deemed a refusal of ratification.

Pending the ratification, the bona fide counterpart has the right to rescind. The rescission shall be made by a notice.

Article 49 Where an actor enters, without the right of agency, in excess of the right of agency or beyond the expiration of the right of agency, into a contract in the name of a principal, and where the counterpart has grounds to believe that the actor has the right of agency, the act of agency shall be deemed as effective.

Article 50 Where a legal person, or the legal representative or the person in charge of an organization exceeds the limits of power in making a contract, the act of representation shall be effective unless the counterpart is aware or ought to be aware of the excess of the limit of power.

Article 51 Where a person without the right of disposal disposes of another's property, upon ratification by the obligee or if the person without the right of disposal obtains the right of disposal after making the contract, the contract shall be effective.

Article 52 A contract is invalid under any of the following circumstances:

- (1) either party enters into the contract by means of fraud or coercion and impairs the State's interests;
- (2) there is malicious conspiracy causing damage to the interests of the State, of the collective or of a third party;
- (3) there is an attempt to conceal illegal goals under the disguise of legitimate forms;
- (4) harm is done to social and public interests; or
- (5) mandatory provisions of laws and administrative regulations are violated.

Article 53 The following clauses on liability exemption in a contract shall be invalid:

- (1) those causing physical injury to the other party; or
- (2) those causing losses to property to the other party by intention or due to gross negligence.

Article 54 Either party has the right to request a people's court or an arbitration institution to alter or rescind any of the following contracts:

- (1) any contract which is made under substantial misunderstanding; or
- (2) any contract the making of which lacks fairness.

Where a party makes the other party enter into a contract against its true will by means of deceit, coercion or taking advantage of its difficulties, the injured party has the right to request a people's court or an arbitration institution to alter or rescind the contract.

Where the request of the party is an alteration to the contract, the people's court or arbitration institution shall not rescind it.

Article 55 The right to rescind shall vanish where:

(1) the party with the right to rescind has not exercised it within a year from the date on which it was aware or ought to be aware of the matter for the rescission; or

(2) the party with the right to rescind waives its right by express indication or by its own act after it was aware of the matter for the rescission.

Article 56 An invalid or rescinded contract does not have legal binding force from the outset. If a part of a contract becomes invalid without affecting the validity of the other parts, the other parts remain valid.

Article 57 If a contract becomes invalid, or is rescinded or terminated, the validity of its independently existing clauses pertaining to the settlement of disputes shall not be affected.

Article 58 After a contract becomes invalid or is rescinded, any property obtained under the contract shall be returned. If it is impossible or unnecessary to return the property, compensation shall be made at an estimated price. The party at fault shall compensate the other party for the loss caused by the fault. If both parties have faults, they shall bear their respective responsibilities.

Article 59 If the parties impair by malicious conspiracy the interests of the State, of the collective or of a third party, the property they have thus obtained shall be returned to the State, the collective or the third party.

#### Chapter IV Fulfillment of the Contract

Article 60 The parties shall fulfill fully their respective obligations as contracted.

The parties shall observe the principle of good faith and fulfill the obligations of notification, assistance and confidentiality in accordance with the nature and aims of the contract and trade practices.

Article 61 For a contract that has become valid, where the parties have not stipulated the contents regarding quality, price or remuneration or the place of performance, or have stipulated them unclearly, the parties may supplement them by agreement; if they are unable to reach a supplementary agreement, the problem shall be determined in accordance with the related clauses of the contract or with trade practices.

Article 62 Where the parties have unclearly stipulated related contents in a contract and fails to determine them in accordance with the provisions of Article 61 of this Law, the following provisions shall apply:

(1) in case of unclear quality requirements, the contract shall be performed in accordance with State standards or trade standards, or in the absence of such standards, in accordance with common standards or special standards conforming to the aim of the contract;

(2) in case of unclear price or remuneration stipulation, the contract shall be performed in accordance with the market price in the place of contract performance at the time of the making of the contract, or according to the government-set price or government-guided price if it is so required by law;

(3) in case of unclear stipulation of place of performance, where the payment is in cash, the contract shall be performed in the place of the cash recipient; where the payment is in real estate, the contract shall be performed in the place where the real estate is located; where other targeted matters are involved, the contract shall be performed in the place of the party fulfilling the obligations;

(4) in case of unclear time limit for the performance, the debtor may fulfill its obligations at any time, and the creditor may demand the fulfillment at any time, while giving the debtor necessary time to make preparations;

(5) in case of unclear mode of performance, the contract shall be performed in a manner conducive to the realization of the aim of the contract; and

(6) in case of unclear charge for the performance, the charge shall be borne by the party fulfilling the obligations.

Article 63 For a contract with the government-set price or government-guided price as the fulfilling price, where the government price is adjusted within the delivery period of the contract, the price at the time of delivery shall be the fulfilling price. Where an overdue delivery occurs and the price goes up at the delivery, the original price shall be the fulfilling price; if the price drops at the delivery, the new price shall be the fulfilling price. Where an overdue delivery-taking or overdue payment occurs, the new price shall be the fulfilling price if the price goes up; and the original price shall be the fulfilling price if the price goes down.

Article 64 Where the parties agree that the debtor shall discharge the debts to a third party and where the debtor fails to do so or fails to meet its liability as contracted, the debtor shall bear the liability for breach of contract to the creditor.

Article 65 Where the parties agree that a third party shall discharge the debts to the creditor and where the third party fails to do so or fails to meet its liability as contracted, the debtor shall bear the liability for breach of contract to the creditor.

Article 66 Where the parties are in debt to each other and there is no time order for discharging the debts, they shall meet their respective liabilities simultaneously. Either party has the right to reject the other party's demand for the discharge before the latter meets its own liabilities. Either party has the right to reject the other party's demand for the discharge if the latter fails to meet its liabilities as contracted.

Article 67 Where the parties are in debt to each other and there is a time order for them to discharge the debts, the party which is the next to discharge the debts has the right to reject the discharge demanded by the party which is the first to meet its liabilities but fails to meet them. The

party which is the next to discharge the debts has also the right to reject a corresponding discharge demanded by the party which is the first to meet its liabilities but fails to meet them as contracted.

Article 68 The party which ought to discharge its debts first may suspend the discharge if it has truthful evidence to prove that the other party falls under any of the following situations:

- (1) business operations seriously deteriorating;
- (2) diverting properties and withdrawing capital to evade debts;
- (3) falling into business discredit; or
- (4) other situations showing inability or possible inability to meet liabilities.

A party that suspends the discharge without truthful evidence shall bear the liability for breach of contract.

Article 69 Where a party suspends the discharge of its debts in accordance with the provisions of Article 68 of this Law, it shall promptly notify the other party of the suspension. The party shall resume the discharge when the other party provides a guarantee. The party that has suspended the discharge may dissolve the contract if the other party has failed to regain its capability of meeting its liabilities and to provide a guarantee within a reasonable period of time.

Article 70 If a creditor splits, merges or changes domicile without notifying the debtor and thus makes it difficult to discharge the debts, the debtor may suspend the discharge or deposit the targeted matter.

Article 71 The creditor may refuse an anticipated discharge of debts by the debtor, except that the anticipated discharge does not impair the creditor's interest.

Any additional expenses caused to the creditor by the debtor's anticipated discharge of debts shall be borne by the debtor.

Article 72 The creditor may refuse a discharge of debts in part by the debtor, except that the partial discharge does not impair the creditor's interest.

Any additional expenses caused to the creditor by the debtor's discharge of debts in part shall be borne by the debtor.

Article 73 If a debtor is indolent in exercising its matured creditor's rights and thus causes losses to the creditor, the creditor may apply to a people's court to subrogate the debtor's creditor's rights and exercise them under the creditor's name, except for the creditor's rights exclusively belonging to the debtor.

The scope for exercising the subrogation is limited to the creditor's rights enjoyed by the creditor. The expenses required by the creditor's subrogation shall be borne by the debtor.

Article 74 If a debtor disclaims its due creditor's rights or transfers gratis its property and thus causes losses to the creditor, the creditor may apply to a people's court to rescind the debtor's action. The creditor may also apply to a people's court to rescind the debtor's action if the debtor

causes losses to the creditor by transferring its property at a low price evidently unreasonable and with awareness of the transferee.

The scope for exercising the right of rescission is limited to the creditor's rights enjoyed by the creditor. The expenses required by the creditor in exercising its right of rescission shall be borne by the debtor.

Article 75 The right of rescission shall be exercised within one year from the day on which the creditor is aware or ought to be aware of the matters for the rescission. If a creditor does not exercise its right of rescission within five years from the day on which the action of the debtor occurred, the right of rescission shall vanish.

Article 76 After a contract has become valid, neither party may refuse to perform its obligations under the contract due to any change in name or designation or any change in legal representative, person in charge or sponsor.

## Chapter V Modification and Transfer of the Contract

Article 77 The parties may modify the contract upon consensus through consultation.

Where provisions of laws and administrative regulations require the modification of a contract to go through approval and registration procedures, such provisions shall govern.

Article 78 A contract shall be assumed as not having been modified if the content of the modification of the contract is not clearly agreed upon by the parties.

Article 79 A creditor may transfer its rights under a contract in whole or part to a third party, except in any of the following circumstances:

- (1) the transfer is not allowed according to the nature of the contract;
- (2) the transfer is not allowed according to the agreement between the parties; or
- (3) the transfer is not allowed according to the provisions of laws.

Article 80 Any transfer of rights by a creditor shall be notified to the debtor. The transfer shall not bind the debtor without such notification.

A creditor may not revoke the notice of its transfer of rights, except with the consent of the transferee.

Article 81 Where a creditor transfers its rights, the transferee shall also obtain the accessory rights related to the creditor's rights, except for cases the accessory rights exclusively belonging to the creditor.



Article 82 After a debtor has received a notice on the transfer of creditor's rights, the debtor may address its plea against the transferor to the transferee.

Article 83 When a debtor receives a notice on the transfer of creditor's rights, and if the debtor has creditor's rights over the transferee and the creditor's rights of the debtor are matured before or at the same time as the transferred creditor's rights, the debtor may advocate to the transferee an offset.

Article 84 If a debtor intends to transfer its obligations under a contract in whole or in part to a third party, consent shall be obtained from the creditor.

Article 85 If a debtor transfers its obligations, the new debtor may advocate the original debtor's plea against the creditor.

Article 86 If a debtor transfers its obligations, the new debtor shall assume the accessory debts related to the principal debts, except for the accessory debts exclusively assumed by the original debtor.

Article 87 Where provisions of laws and administrative regulations require the transfer of rights or obligations to go through approval and registration procedures, such provisions shall govern.

Article 88 Either party may, with the consent of the other party, transfer its rights together with its obligations under the contract to a third party.

Article 89 When rights together with obligations are transferred, the provisions of Article 79, Articles 81 to 83, and Articles 85 to 87 of this Law shall apply.

Article 90 Where a party merges after the execution of the contract, the legal person or the organization arising from the merger shall exercise the rights under the contract and fulfill the obligations under the contract. Where a party splits after the execution of the contract, unless the creditor and the debtor stipulate otherwise, the legal persons or the organizations arising from the split shall enjoy joint and several creditor's rights under the contract and assume joint and several liabilities under the contract.

## Chapter VI Termination of Rights and Obligations under the Contract

Article 91 The rights and obligations under a contract shall terminate in any of the following situations:

- (1) liabilities have all been met as contracted;
- (2) the contract is dissolved;
- (3) liabilities are offset against each other;
- (4) the debtor has deposited the targeted matter according to law;

- (5) the creditor grants exemption from liabilities;
- (6) both creditor's rights and liabilities are undertaken by one same person; or
- (7) other situations as provided for by law or stipulated by the parties.

Article 92 After the termination of rights and obligations under a contract, the parties shall perform the duties of notification, assistance and confidentiality in light of the principle of good faith and in accordance with trade practices.

Article 93 The parties may dissolve the contract upon consensus through consultation.

The parties may stipulate the conditions for dissolution of the contract by either party. When the conditions for dissolution of the contract mature, the party with the right to dissolve may dissolve the contract.

Article 94 The parties may dissolve the contract under any of the following circumstances:

- (1) the aim of the contract cannot be attained because of force majeure;
- (2) before the period of performance expires, either party clearly indicates by word or by act that it will not discharge the principal debts;
- (3) either party delays the discharge of the principal debts and still fails to discharge them within a reasonable period of time after being urged;
- (4) either party delays the discharge of debts or is engaged in other illegal activities and thus makes realization of the aim of the contract impossible; or
- (5) any other circumstances as provided for by law.

Article 95 If a time limit for exercising the right to dissolve the contract is provided for by laws or by agreement of the parties, and the party concerned does not exercise such right at the expiration of the time limit, such right shall vanish.

If no time limit for exercising the right to dissolve is provided for by laws or by agreement of the parties, but the party concerned does not exercise such right within a reasonable period of time after being urged by the other party, such right shall vanish.

Article 96 When a party advocates the dissolution of the contract in accordance with the provisions of Paragraph 2 of Article 93 and Article 94 of this Law, the party shall notify the other party. The contract shall be dissolved when the notice reaches the other party. If the other party has objection, it may apply to a people's court or an arbitration institution to determine the validity of the dissolution of the contract.

Where provisions of laws and administrative regulations require the dissolution of a contract to go through approval and registration procedures, such provisions shall govern.

Article 97 After the dissolution of a contract, for those clauses not yet performed, the performance shall cease. For those already performed, the party concerned may, in accordance with the

situation of performance and the nature of the contract, demand their restoration to the original status or take other remedial measures, and have the right to claim compensation.

Article 98 The termination of rights and obligations under a contract shall not affect the validity of its clauses regarding settlement and liquidation.

Article 99 If the parties mutually owe matured liabilities, and if the varieties and quality of targeted matters of the liabilities are the same, either party may offset its liabilities against those of the other party, except for the liabilities that cannot be offset according to the provisions of laws or according to the nature of the contract.

The party that advocates an offset shall notify the other party. The notice shall become effective when it reaches the other party. No conditions or time limit may be attached to the offset.

Article 100 If the parties mutually owe liabilities and the targeted matters are different in variety and quality, they may also be offset against each other upon consensus through consultation by the parties.

Article 101 The debtor may deposit its targeted matter if it has difficulty to discharge its debts owing to any of the following situations:

- (1) the creditor refuses to accept the discharge without justifiable reason;
- (2) the whereabouts of the creditor is unknown;
- (3) the creditor dies without determining an heir or has lost capacity of civil conduct without determining a guardian; or
- (4) other situations as provided for by law.

If the targeted matter is unsuitable for deposit or the deposit is too expensive, the debtor may auction or sell it and deposit the proceeds according to law.

Article 102 After the targeted matter is deposited, the debtor shall promptly notify the creditor or his heir or guardian thereof, unless the whereabouts of the creditor is unknown.

Article 103 The risk of damage and loss of the targeted matter after deposit shall be borne by the creditor. Accrued interest from the targeted matter during the period of deposit shall belong to the creditor. The expenses for depositing the targeted matter shall be borne by the creditor.

Article 104 The creditor may collect the deposited targeted matter at any time. However, if the creditor owes the debtor matured liabilities, the depositary agency shall, at the debtor's request, disallow the creditor to collect the targeted matter before meeting its own liabilities or providing a guarantee.

The right of a creditor to collect the targeted matter shall vanish if the right is not exercised within five years from the date of deposit and the targeted matter deposited shall belong to the State after deduction of the deposit expenses.

Article 105 If the creditor exempts the debtor from its liabilities in whole or in part, the rights and obligations under the contract shall terminate in whole or in part.

Article 106 If both creditor's rights and obligations are undertaken by one same person, the rights and obligations under the contract shall terminate, except for those involving the interests of a third party.

## Chapter VII Liability for Breach of Contract

Article 107 Either party that fails to perform its obligations under the contract or fails to perform them as contracted shall bear the liability for breach of contract by continuing to perform the obligations, taking remedial measures, or compensating for losses.

Article 108 If either party explicitly expresses or indicates by act its intention not to perform its obligations under the contract, the other party may, before the expiration of the period of fulfillment, demand that the party in question bear the liability for breach of contract.

Article 109 If either party fails to pay charges or remuneration, the other party may demand the payment.

Article 110 If either party fails to discharge non-pecuniary debt or fails to discharge non-pecuniary debt as contracted, the other party may demand the discharge, except in any of the following situations:

- (1) legally or practically the discharge is impossible;
- (2) the targeted matter of the debt is unsuitable for a compulsory discharge or too expensive for the discharge; or
- (3) the creditor does not demand the discharge within a reasonable period of time.

Article 111 If the quality fails to meet the agreed requirements, liability for breach of contract shall be borne in accordance with the agreement between the parties. If the liability for breach of contract is not stipulated or is not clearly stipulated, nor can it be determined pursuant to the provisions of Article 61 of this Law, the party suffering the loss may, with reference to the nature of the targeted matter and the degree of the loss, choose in a reasonable manner to demand that the other party bear the liability for breach of contract in such form as repair, replacement, redoing, return of the targeted matter, discount in payment or remuneration.

Article 112 Where either party fails to perform its obligations under the contract or does not perform its obligations as contracted, and losses are still caused to the other party after the performance of obligations or the adoption of remedial measures, the party in fault shall compensate for the losses.

Article 113 If either party fails to perform its obligations under the contract or does not perform its obligations as contracted and thus causes losses to the other party, the amount of compensation for the loss shall be equivalent to the loss actually caused by the breach of contract and shall include the profit obtainable after the performance of the contract, but shall not exceed the sum of the loss that might be caused by a breach of contract and has been anticipated or ought to be anticipated by the breaching party in the making of the contract.

A business operator who practices fraud in providing commodities or services to consumers shall undertake to compensate for the damage in accordance with the provisions of the Law of the People's Republic of China on the Protection of Consumers' Rights and Interests.

Article 114 The parties may stipulate that in case of breach of contract by either party a certain amount of penalty shall be paid to the other party according to the seriousness of the breach, and may also stipulate the method for calculating the sum of compensation for losses caused by the breach of contract.

If the stipulated penalty for breach of contract is lower than the loss caused by the breach, the party concerned may apply to a people's court or an arbitration institution for an increase. If the stipulated penalty for breach of contract is excessively higher than the loss caused by the breach, the party concerned may apply to a people's court or an arbitration institution for an appropriate reduction.

If the parties agree upon a penalty for the breach of contract by a delayed fulfillment, the breaching party shall, after paying the penalty for breach of contract, discharge the debts notwithstanding.

Article 115 The parties may, in accordance with the Guaranty Law of the People's Republic of China, agree that one party pays a deposit to the other party as a guarantee of the creditor's rights. After the debtor has met its liabilities, the deposit shall be calculated as part of the price or be refunded. If the party paying the deposit fails to meet its liabilities as contracted, it shall not be entitled to the refund of the deposit. If the party receiving the deposit fails to meet its liabilities as contracted, it shall doubly refund the deposit.

Article 116 In the event that a penalty for breach of contract and a deposit are both stipulated by the parties, when either party breaches the contract, the other party may choose to apply either the clause on penalty for breach of contract or the clause on deposit.

Article 117 If a contract cannot be fulfilled due to force majeure, the obligations may be exempted in whole or in part depending on the impact of the force majeure, unless laws provide otherwise. If the force majeure occurs after a delayed fulfillment, the obligations of the party concerned may not be exempted.

Force majeure as used herein means objective situations which cannot be foreseen, avoided or overcome.

Article 118 Either party that is unable to fulfill the contract due to force majeure shall notify the other party in time in order to reduce losses possibly inflicted to the other party, and shall provide evidence thereof within a reasonable period of time.

Article 119 After either party breaches the contract, the other party shall take appropriate measures to prevent the increase of the loss; the party that fails to take appropriate preventive measures and thus aggravates the loss may not claim compensation for the increased part of the loss.

The reasonable expenses incurred by the other party in preventing the aggravation of the loss shall be borne by the breaching party.

Article 120 If both parties breach the contract, they shall bear their respective liabilities accordingly.

Article 121 Either party that breaches the contract due to a third party shall bear the liability for breach of contract to the other party. The disputes between the breaching party and the third party shall be settled pursuant to law or by agreement.

Article 122 If the breach of contract by either party causes infringement on the personal or property rights and interests to the other party, the injured party has the right to choose whether to demand that the breaching party bear the liability for breach of contract pursuant to this Law or bear the liability for infringement of rights in accordance with other laws.

## Chapter VIII Miscellaneous Provisions

Article 123 Where other laws stipulate otherwise on contracts, such provisions shall govern.

Article 124 For contracts not explicitly regulated by the Specific Provisions of this Law or other laws, the General Provisions of this Law shall apply, and the most similar provisions in the Specific Provisions of this Law or other laws may concurrently be used as reference.

Article 125 In the event that the parties dispute about the understanding of a clause of the contract, the actual meaning of the clause shall be inferred and determined on the basis of the words and sentences used in the contract, related clauses of the contract, aim of the contract, trade practices and the principle of good faith.

If a contract is made in two or more languages which are equally authentic as contracted, the words and sentences used in the different language texts shall be assumed to be identical in denotation. If the words and sentences used in different language texts contain discrepancies, they shall be interpreted according to the aim of the contract.

Article 126 The parties to a foreign-related contract may choose those laws applicable to the settlement of contract disputes, unless stipulated otherwise by law. If the parties to a foreign-related contract fail to make such choice, the State laws most closely related to the contract shall apply.

For the contracts to be fulfilled in the territory of the People's Republic of China on Chinese-foreign equity joint ventures, on Chinese-foreign contractual joint ventures and on Chinese-foreign cooperation in exploring and exploiting natural resources, the laws of the People's Republic of China shall apply.

Article 127 The administrative departments for industry and commerce and other relevant competent administrative departments shall, within the scope of their respective duties and powers and in accordance with the law, be responsible for the supervision and treatment of the illegal activities endangering the State's interests and the social and public interests by making use of contracts; if a crime is constituted, criminal responsibility shall be investigated pursuant to law.

Article 128 The parties may settle contract disputes through consultations or mediation.

If the parties are unwilling to resort to consultation or mediation, or such consultation or mediation fails, the parties may apply to an arbitration institution for arbitration according to the arbitration agreement. The parties to a foreign-related contract may, according to the arbitration agreement, apply to a Chinese arbitration institution or any other arbitration institution for arbitration. If the parties have no arbitration agreement or the arbitration agreement is invalid, they may initiate an action in a people's court. The parties shall implement any legally effective judgment, arbitral award or letter of mediation; in case of a refusal to implement, the other party may apply to a people's court for execution.

Article 129 The time limit for initiating legal proceedings or applying for arbitration regarding contracts of international sale of goods and contracts on technology import and export shall be four years, calculated from the day on which the party concerned is aware or ought to be aware of the infringement of its rights. The time limit for initiating legal proceedings or applying for arbitration regarding other contracts shall be governed by the provisions of relevant laws.

## Specific Provisions

### Chapter IX Purchase and Sale Contracts

Article 130 A "purchase and sale contract" is a contract whereby the seller transfers its ownership over the targeted matter to the buyer and the buyer pays the price therefor.

Article 131 In addition to those clauses prescribed in Article 12 of this Law, a purchase and sale contract may also contain such clauses as method of packaging, inspection standards and method, mode of settlement, language used for the contract and their validity.

Article 132 The seller shall own the targeted matter for sale or have the right of disposal.

For a targeted matter the transfer of which is forbidden or restricted by laws or administrative regulations, the provisions therein shall govern.

Article 133 The ownership over a targeted matter is transferred upon the delivery of the targeted matter, unless the law provides otherwise or the parties stipulate otherwise.

Article 134 The parties may stipulate in a purchase and sale contract that the seller retains the ownership over the targeted matter if the buyer fails to pay the price or to perform other obligations.

Article 135 The seller shall perform its obligations of delivering the targeted matter or providing documents for taking delivery of the targeted matter and transferring the ownership over the targeted matter to the buyer.

Article 136 The seller shall hand over the related certificates and data to the buyer as contracted or according to trade practices in addition to the documents for taking delivery of the targeted matter.

Article 137 Where targeted matters involving intellectual property rights such as computer software are to be sold, unless the laws provide otherwise or the parties stipulate otherwise, the intellectual property rights of these targeted matters shall not belong to the buyer.

Article 138 The seller shall deliver the targeted matter within the stipulated time limit. Where a time limit is stipulated for the delivery, the seller may deliver the targeted matter at any time within the time limit.

Article 139 If the time limit for delivery is not stipulated or is unclearly stipulated, the provisions of Article 61 and sub-paragraph 4, Article 62 of this Law shall apply.

Article 140 If the buyer has already possessed the targeted matter before the contract is entered into, the time at which the contract becomes valid is the time of delivery.

Article 141 The seller shall deliver the targeted matter to the agreed place of delivery.

If the place of delivery is not stipulated or is unclearly stipulated by the parties and cannot be determined according to the provisions of Article 61 of this Law, the following provisions shall apply:

(1) If the targeted matter needs to be transported, the seller shall consign the targeted matter to the first carrier for its delivery to the buyer; and

(2) If the targeted matter does not need to be transported, and if the seller and the buyer know the location of the targeted matter when entering into the contract, the seller shall deliver the targeted matter at the said location of the targeted matter; if the location of the targeted matter is unknown, the seller shall deliver the targeted matter at the seller's place of business at the time when the contract is made.

Article 142 The risks of damage and loss of the targeted matter shall be borne by the seller prior to the delivery and by the buyer after the delivery, unless the laws provide otherwise or the parties stipulate otherwise.



Article 143 If the targeted matter is unable to be delivered within the agreed time limit because of the buyer, the buyer shall bear the risks of damage and loss of the targeted matter from the date of breaching the agreement.

Article 144 When the seller consigns its sold targeted matter to a carrier for transport, unless the parties stipulate otherwise, the risks of damage and loss of the targeted matter en route shall be borne by the buyer from the time when the contract is made.

Article 145 If the place of delivery is not stipulated or is unclearly stipulated by the parties, and if the targeted matter needs to be transported according to sub-paragraph 1, paragraph 2, Article 141 of this Law, the buyer shall bear the risks of damage and loss of the targeted matter when the seller consigns the targeted matter to the first carrier for transport.

Article 146 If the seller puts the targeted matter at the place of delivery as contracted or in accordance with the provisions of sub-paragraph 2, paragraph 2, Article 141 of this Law and if the buyer, in violation of the stipulation, does not take delivery of the targeted matter, the risks of damage and loss shall be borne by the buyer from the day on which the buyer violates the stipulations.

Article 147 The seller's failure to provide documents and data in relation to the targeted matter as contracted shall not affect the shift of the risks of damage and loss of the targeted matter.

Article 148 If the aim of a contract cannot be achieved owing to the fact that the quality of a targeted matter fails to meet the requirements, the buyer may refuse to accept the targeted matter or may dissolve the contract. In case the buyer refuses to accept the targeted matter or dissolves the contract, the risks of damage and loss of the targeted matter shall be borne by the seller.

Article 149 The responsibility of the buyer to bear the risks of damage and loss of a targeted matter shall not affect the buyer's right to demand that the seller bear the liability for breach of contract if the seller's discharge of debts fails to comply with the agreement.

Article 150 The seller has the obligation to guarantee that no third party shall claim rights against the buyer over the targeted matter delivered unless the law provides otherwise.

Article 151 If the buyer is aware or ought to be aware that a third party has rights over the targeted matter while entering into the contract, the seller shall not assume the obligations stipulated in Article 150 of this Law.

Article 152 Where a buyer has clear evidence to prove that a third party may probably claim rights over the targeted matter, the buyer may suspend the payment therefor, except in the case that the seller has provided an appropriate guarantee.

Article 153 The seller shall deliver the targeted matter in accordance with the contracted quality requirements. When the seller provides quality specifications of the targeted matter, the targeted matter delivered shall conform to the specified quality requirements.

Article 154 If the parties have not stipulated or have unclearly stipulated the quality requirements of the targeted matter, nor can they determine them pursuant to the provisions of Article 61 of this Law, the provisions of sub-paragraph 1 of Article 62 of this Law shall apply.

Article 155 If the targeted matter delivered by the seller fails to meet the quality requirements, the buyer may demand that the seller bear the liability for breach of contract pursuant to the provisions of Article 111 of this Law.

Article 156 The seller shall deliver the targeted matter in compliance with the contracted packaging method. If the parties have not stipulated or have unclearly stipulated the packaging method, nor can they determine it pursuant to the provisions of Article 61 of this Law, the targeted matter shall be packed in a general way, and in the absence of a general way, it shall be packed in a manner sufficient to protect the targeted matter.

Article 157 The buyer shall inspect the targeted matter after receiving it within the agreed period for inspection. If no period for inspection is stipulated, the buyer shall inspect the targeted matter in time.

Article 158 If the parties stipulate the period for inspection, the buyer shall, within the period for inspection, notify the seller of any unconformity of the targeted matter with the agreed quantity or quality. If the buyer is indolent to notify the seller thereof, the targeted matter shall be deemed in conformity with the agreed quantity or quality.

If the parties have not stipulated an inspection period, the buyer shall notify the seller of the unconformity of the targeted matter with the agreed quantity or quality within a reasonable period of time after it discovers or ought to discover the unconformity. If the seller fails to notify the seller within a reasonable period of time or within two years after the date of taking delivery of the targeted matter, the targeted matter shall be deemed in conformity with the agreed quantity or quality. However, in the event that there is a quality guarantee period for the targeted matter, the quality guarantee period shall apply instead of the provisions on the two-year limit.

If the seller is aware or ought to be aware of the unconformity of the targeted matter with the stipulation, the buyer shall not be limited by the informing time limit stipulated in the preceding paragraphs.

Article 159 The buyer shall effect the payment in accordance with the contracted price. If the parties have not stipulated or have unclearly stipulated the price, the provisions of Article 61 and sub-paragraph 2, Article 62 of this Law shall apply.

Article 160 The buyer shall effect the payment at the agreed place. If the parties have not stipulated or have unclearly stipulated the place of payment, nor can they determine it pursuant to the provisions of Article 61 of this Law, the buyer shall pay at the place of business of the seller or, if the delivery of the targeted matter or that of the document for taking delivery of the targeted matter is contracted as the precondition for the payment, the payment shall be effected at the place where the targeted matter or the document for taking delivery of the targeted matter is delivered.

Article 161 The buyer shall effect the payment at the agreed time. If the time for payment is not stipulated or not clearly stipulated, nor can it be determined pursuant to the provisions of Article 61 of this Law, the buyer shall pay at the same time as it takes delivery of the targeted matter or receives the document for taking delivery of the targeted matter.

Article 162 If the seller delivers extra targeted matter, the buyer may accept or refuse to accept the extra part. If the buyer accepts the extra, it shall pay for the extra at the price contracted. If the buyer refuses to accept the extra, the buyer shall promptly notify the seller.

Article 163 Any accrued interest generated by the targeted matter shall belong to the seller before delivery and to the buyer after the delivery.

Article 164 If a contract is dissolved due to the unconformity of the principal targeted matter with the contracted requirements, the effect of the dissolution shall extend to the accessory matters. If the contract is dissolved due to the unconformity of the accessory matters with the contracted requirements, the effect of the dissolution shall not extend to the principal targeted matter.

Article 165 If a targeted matter is composed of several objects and one of them fails to meet the contracted requirements, the buyer may dissolve the part of the contract in connection with that object. If the separation of that object from the other objects affects markedly the value of the targeted matter, the party concerned may dissolve the contract in connection with the several objects.

Article 166 For the targeted matter to be delivered by batches, if the seller leaves one batch of the targeted matter not delivered, or delivered in a manner not in conformity with the agreement, so that the aim of the contract in connection with that batch of the targeted matter cannot be attained, the buyer may dissolve what is in connection with that batch of the targeted matter.

If the seller leaves one batch of the targeted matter not delivered, or delivered in a manner not in conformity with the agreement, so that the subsequent delivery of the remaining batches of the targeted matter cannot attain the aim contracted, the buyer may dissolve what is in connection with that batch and the remaining batches of the targeted matter.

If the buyer has dissolved the part of the contract in connection with one of the batches of the targeted matter and if that batch and the remaining batches of the targeted matter are interdependent on each other, the buyer may dissolve the part in connection with all the batches whether already or not yet delivered.

Article 167 If a buyer effects payment by installments and the unpaid installments amount to one-fifth of the total price, the seller may demand that the buyer pay the total sum or may dissolve the contract.

The seller deciding to dissolve the contract may request demand that the buyer pay a fee for the use of the targeted matter.

Article 168 The parties to a sale transaction by sample shall seal up the sample and may make specifications of its quality. The targeted matter delivered by the seller shall be identical in quality with the sample and its specifications.

Article 169 If the buyer to a sale transaction by sample is unaware of the sample's hidden defects, even if the targeted matter delivered is identical with the sample, the quality of the targeted matter delivered by the seller shall still conform to the common standards for the same category of objects.

Article 170 The parties to a sale transaction on trial use may stipulate a period for trial use of the targeted matter. If the period for trial use is not stipulated or not clearly stipulated by the parties, nor can it be determined pursuant to the provisions of Article 61 of this Law, it shall be determined by the seller.

Article 171 The buyer to a sale transaction on trial use may purchase or refuse to purchase the targeted matter within the period for trial use. If, on the expiry of the period for trial use, the buyer makes no indication as to whether to purchase or not, the targeted matter shall be deemed as purchased.

Article 172 The rights and obligations of the parties to a sale transaction by bid and tender, as well as the procedures for bid and tender, shall be governed by the provisions of the relevant laws and administrative regulations.

Article 173 The rights and obligations of the parties to an auction, as well as the auction procedures, shall be governed by the provisions of the relevant laws and administrative regulations.

Article 174 Any other non-gratuitous contract shall comply with laws containing relevant provisions and in the absence of such provisions, shall be handled with reference to the provisions governing purchase and sale contracts.

Article 175 The parties that agree to transfer the ownership of the targeted matters by barter trade shall handle the case with reference to the provisions governing purchase and sale contracts.

## Chapter X Contracts for the Supply and Consumption of Electricity, Water, Gas or Heat

Article 176 A contract for the supply and consumption of electricity is a contract whereby the supplier provides electricity to the consumer and the consumer pays the price therefor.

Article 177 A contract for the supply and consumption of electricity shall contain such clauses as the mode, quality and time of the supply, the volume, address and nature of the consumption, the measuring method, the settlement method of electricity price and charges, and the responsibility for the maintenance of electricity supply and consumption facilities.

Article 178 The place of performance of the contract for the supply and consumption of electricity shall be stipulated by the parties; if such place is not stipulated or is unclearly stipulated by the parties, the place of demarcation for property rights of the electricity supply facilities shall be the place of performance.

Article 179 The supplier shall safely supply electricity pursuant to the quality standards for power supply set by the State and as contracted. If the supplier fails to safely supply electricity pursuant

to the quality standards for power supply set by the State and as contracted, and thus causes losses to the consumer, the supplier shall hold the liability for damages.

Article 180 If the supplier needs to cut electricity supply due to scheduled overhauls, unscheduled overhauls, legal limitation of electricity consumption, or consumer's illegal electricity consumption, the supplier shall, pursuant to the relevant regulations of the State, notify the consumer in advance. If the supplier cuts the electricity supply without notifying the consumer in advance and thus causes losses to the consumer, the supplier shall hold the liability for damages.

Article 181 The supplier shall rush to repair without delay according to the State's relevant regulations whenever the electricity supply is cut off due to such reasons as natural disasters. Where the supplier does not rush to repair and thus causes losses to the consumer, the supplier shall hold the liability for damages.

Article 182 The consumer shall pay in time the electricity fee pursuant to the relevant regulations of the State and as contracted by the parties. Where the consumer fails to pay the electricity fee within the scheduled period, it shall pay a penalty in accordance with the contract. Where the consumer, after being urged, still fails to pay the fee and penalty within a reasonable period of time, the supplier may stop the supply of electricity in accordance with the procedures specified by the State.

Article 183 The consumer shall safely consume the electricity in accordance with the relevant regulations of the State and as contracted by the parties. Where the consumer fails to safely consume the electricity in accordance with the relevant regulations of the State and as contracted by the parties and thus causes losses to the supplier, the consumer shall hold the liability for damages.

Article 184 Contracts for the supply and consumption of water, gas or heat shall be governed with reference to the provisions of the contract for the supply and consumption of electricity.

## Chapter XI Donation Contracts

Article 185 A "donation contract" is a contract whereby the donor gives its own property to a donee gratis, and the donee indicates its acceptance of the donation.

Article 186 The donor may rescind the donation prior to the transfer of the rights of the donated property.

The provisions of the preceding paragraph shall not apply to donation contracts of a public welfare or moral obligation nature such as contracts on disaster-relief, or poverty-relief nor to the donation contracts already notarized.

Article 187 The donated property shall go through registration and other procedures if the law so requires.

Article 188 For any donation contract of a public welfare or moral obligation nature such as a contract on disaster-relief or poverty-relief, or for any donation contract already notarized, if the donor does not deliver the property to be donated, the donee may demand the delivery.

Article 189 Where damage or loss of the donated property is caused by the donor due to its deliberate intention or major fault, the donor shall hold the liability therefor.

Article 190 A donation may be subject to collateral obligation.

If a donation is subject to collateral obligations, the donee shall perform its obligations as contracted.

Article 191 If the donated property has defects, the donor shall not bear any responsibility. If the donated property under a donation subject to collateral obligation has defects, the donor shall, within the limit of the collateral obligations, bear the same liabilities as a seller.

If the donor does not notify the donee about the defects intentionally or has guaranteed the flawlessness and thus causes losses to the donee, the donor shall hold the liability for damages.

Article 192 The donor may rescind the donation if the donee behaves in any of the following manners:

- (1) severely infringing upon the donor or upon any close relatives of the donor;
- (2) having obligation to support the donor but failing to fulfill that obligation; or
- (3) failing to fulfill the obligations as stipulated in the donation contract.

The right of rescission of the donor shall be exercised within one year from the date on which it is aware or ought to be aware of the reasons therefor.

Article 193 If a donee's illegal act leads to the death or loss of capacity for civil conduct of the donor, the heir or legal agent of the donor may rescind the donation.

The right of rescission of the donor's heir or legal agent shall be exercised within six months from the date the heir or the legal agent is aware or ought to be aware of the reasons therefor.

Article 194 If a donation is rescinded, the person having the right to rescind may demand that the donee return the donated property.

Article 195 A donor whose financial conditions deteriorates markedly and whose production, business or family life is thereby severely affected may cease to perform the donation obligations.

## Chapter XII Loan Contracts

Article 196 A "loan contract" is a contract whereby the borrower borrows a loan from the lender and repays the loan with interest when the loan becomes due.

Article 197 Loan contracts shall be made in written form, except for the loans otherwise contracted between natural persons.

A loan contract contains such clauses as the category of the loan, kind of currency, purpose of use, amount, interest rate, term and method of repayment.

Article 198 In making a loan contract, the lender may require the borrower to provide a guaranty. The guaranty shall be governed by the provisions of the Guaranty Law of the People's Republic of China.

Article 199 In making a loan contract, the borrower shall, as required by the lender, provide the lender with truthful information about its business activities and financial conditions related to the borrowing.

Article 200 The interest on a loan may not be deducted from the principal in advance. If the interest is deducted from the principal in advance, the loan shall be repaid and the interest shall be calculated according to the actual amount of the loan provided.

Article 201 A lender who fails to provide the loan at the contracted time and amount and thus causes a loss to the borrower shall hold the liability for the loss.

A borrower who fails to take the loan at the contracted time and amount shall pay an interest based on the contracted time and amount.

Article 202 The lender may, as contracted, inspect and supervise the use of the loan. The borrower shall as contracted regularly provide such materials as financial and accounting statements to the lender.

Article 203 If the borrower fails to use the loan in accordance with the contracted purpose of the use, the lender may stop providing the loan, recall the loan ahead of time or dissolve the contract.

Article 204 The interest rates of the financial institutions offering loan services shall be fixed within the ceiling and floor of loan interest rates set by the People's Bank of China.

Article 205 The borrower shall pay the interest within the contracted time limit. If the time limit for payment of interest is not stipulated or not clearly stipulated by the parties, nor can it be determined pursuant to the provisions of Article 61 of this Law, the interest shall be paid together with the repayment of the loan in case the loan term is less than one year; the interest shall be paid at the end of each full year in case the loan term is more than one year and, the interest shall be paid together with the loan repayment if the remaining loan term is less than one year.

Article 206 The borrower shall repay the loan within the contracted time limit. If the time limit is not stipulated or not clearly stipulated by the parties, nor can it be determined pursuant to the provisions of Article 61 of this Law, the borrower may repay the loan at any time, and the lender may urge the borrower to repay the loan within a reasonable period of time.

Article 207 A borrower who fails to repay the loan within the contracted time limit shall pay an overdue interest pursuant to the contract or to the relevant regulations of the State.

Article 208 If the borrower repays the loan ahead of schedule, unless the parties stipulate otherwise, the interest shall be calculated according to the actual duration of the loan.

Article 209 The borrower may apply to the lender for an extension of the loan term before the loan becomes due. With the consent of the lender, the loan term may be extended.

Article 210 A loan contract between natural persons takes effect from the time when the lender provides the loan.

Article 211 Where a loan contract between natural persons does not stipulate the payment of interest or stipulates it unclearly, the loan shall be deemed as bearing no interest.

If a loan contract between natural persons stipulates the payment of interest, the interest rate may not violate the regulations of the State regarding the restriction on the loan interest rates.

### Chapter XIII Lease Contracts

Article 212 A "lease contract" is a contract whereby the lessor delivers the leased object to the lessee for use or for obtaining proceeds, and the lessee pays the rent therefor.

Article 213 A contract for lease shall contain such clauses as the name of the leased object, quantity, purpose of use, term of the lease, rent and the time limit and method of its payment, and the maintenance of the leased object.

Article 214 The lease term may not exceed twenty years. If it exceeds twenty years, the period in excess shall be invalid.

When the lease term expires, the parties may renew the lease contract, however, the contracted lease term may not exceed twenty years from the date of renewal of the contract.

Article 215 A lease contract with a term exceeding six months shall be made in written form. Where the parties do not use written form, the lease shall be deemed a lease without fixed term.

Article 216 The lessor shall deliver the leased object to the lessee as contracted and keep the leased object fit for the contracted use during the lease term.

Article 217 The lessee shall use the leased object in the contracted manner. If the manner of use is not stipulated or is unclearly stipulated by the parties, nor can it be determined pursuant to the provisions of Article 61 of this Law, the leased object shall be used in a manner consistent with its nature.

Article 218 The lessee shall not hold the liability for the loss caused by the wear and tear in the use of the leased object when the manner of use is consistent with the contract or with the nature of the object.



Article 219 Where the lessee fails to use the leased object in the manner as contracted or consistent with its nature, thus causing damage to the leased object, the lessor may dissolve the contract and claim compensation therefor.

Article 220 The lessor shall perform the duty of maintaining the leased object, unless the parties stipulate otherwise.

Article 221 When a leased object requires maintenance and repair, the lessee may ask the lessor to take care of the maintenance and repair within a reasonable period of time. If the lessor fails to perform the maintenance obligation, the lessee may maintain and repair the leased object on its own and the expenses arising therefrom shall be borne by the lessor. If the maintenance and repair of the leased object affects its use by the lessee, the rent shall be reduced or the lease term shall be extended accordingly.

Article 222 The lessee shall appropriately preserve the leased object, and in case of any damage or loss of the leased object caused by an inappropriate preservation, the lessee shall hold the liability for damages.

Article 223 The lessee may, with the consent of the lessor, improve the leased object or supplement it with other objects.

If the lessee improves the leased object or supplement it with other objects without the consent of the lessor, the lessor may demand that the lessee restore the leased object to its original state or compensate for the losses.

Article 224 The lessee may, with the consent of the lessor, sublease the leased object to a third party. The lease contract between the lessee and the lessor shall continue to be valid despite the sublease by the lessee, and if the third party causes losses to the leased object, the lessee shall hold the liability for the losses.

In case of a sublease by the lessee without the consent of the lessor, the lessor may dissolve the contract.

Article 225 Any proceeds resulted from the possession or use of the leased object during the lease term shall belong to the lessee, unless the parties stipulate otherwise.

Article 226 The lessee shall pay the rent within the contracted time limit. If the time limit is not stipulated or is unclearly stipulated by the parties, nor can it be determined pursuant to the provisions of Article 61 of this Law, the rent shall be paid at the expiration of the lease term if the term is less than one year, at the end of each year where the lease term exceeds one year, and shall be paid at the expiration of the lease term if the remaining term is less than one year.

Article 227 If the lessee fails to pay the rent or delays the payment of rent without justifiable reason, the lessor may demand that the lessee pay the rent within a reasonable time limit. The lessor may dissolve the contract if the lessee fails to pay the rent beyond the time limit.

Article 228 If the lessee is unable to use or to gain proceeds from the leased object because of the claim from a third party, the lessee may demand a reduction of or exemption from the rent.

Where a third party claims rights, the lessee shall promptly notify the lessor.

Article 229 A change in the ownership of the leased object within the lease term shall not affect the validity of the lease contract.

Article 230 The lessor intending to sell a leased house shall notify the lessee within a reasonable period of time prior to the sale, and the lessee has the priority to purchase the house under equal conditions.

Article 231 Where a part or the whole of the leased object is damaged or lost for reasons not attributable to the lessee, the lessee may request a reduction of or exemption from the rent; and the lessee may dissolve the contract if the partial or complete damage or loss of the leased object makes it impossible to achieve the contracted goals.

Article 232 Where the parties have not stipulated or have unclearly stipulated the term of the lease, nor can they determine it pursuant to the provisions of Article 61 of this Law, the lease shall be deemed a lease without a fixed term. Either party may dissolve the contract at any time. However, where the lessor is to dissolve the contract, the lessee shall be notified thereof a reasonable period of time in advance.

Article 233 If the leased object endangers the lessee's safety or health, even if the lessee is clearly aware of the substandard quality of the leased object when making the contract, the lessee may dissolve the contract at any time.

Article 234 If the lessee dies within the lease term of a leased house, the persons who live together with the deceased may lease the house according to the original lease contract.

Article 235 The lessee shall return the leased object at the expiration of the lease term. The leased object returned shall be maintained in its after-use state as contracted or in conformity with its nature.

Article 236 If the lessee continues to use the leased object after the expiration of the lease term and the lessor does not raise any objection, the original lease contract shall continue to be valid, but the lease term shall become unfixed.

## Chapter XIV Contracts for Financial Lease

Article 237 A "contract for financial lease" is a contract whereby the lessor, in accordance with the seller and the leased object chosen by the lessee, purchases the leased object from the seller and provides it for use by the lessee, and the lessee pays the rent therefor.

Article 238 A contract for financial lease shall contain such clauses as the name of the leased object, quantity, specifications, technical performance, inspection method, lease term, composition of rent, the time limit, method and kind of currency for the payment of the rent, and the ownership over the leased object at the expiration of the lease term.

Contracts for financial lease shall be made in written form.

Article 239 Where a lessor concludes a purchase and sale contract in accordance with the seller and the leased object chosen by a lessee, the seller shall deliver the targeted matter to the lessee as contracted, and the lessee shall enjoy the rights of the buyer relating to the targeted matter received.

Article 240 The lessor, the seller and the lessee may stipulate that, if the seller fails to perform the obligations under the purchase and sale contract, the lessee shall exercise the right to claim. If the lessee exercises the right to claim, the lessor shall render assistance.

Article 241 Where the lessor concludes a purchase and sale contract in accordance with the seller and the leased object chosen by the lessee, the lessor may not, without the consent of the lessee, modify the content of the contract related to the lessee.

Article 242 The lessor enjoys the ownership over the leased object. If the lessee goes bankrupt, the leased object shall not fall into the category of bankrupt property.

Article 243 The rent under a contract for financial lease shall, unless the parties stipulate otherwise, be determined according to the major part or the whole of the cost for the purchase of the leased object plus reasonable profits for the lessor.

Article 244 If the leased object fails to comply with the agreed requirements or with the purpose of its use, the lessor shall not bear any liability, except in the event that the lessee is dependent upon the lessor's expertise in deciding the leased object or the lessor intervenes with the selection of the leased object.

Article 245 The lessor shall guarantee the possession and use of the leased object by the lessee.

Article 246 Within the period of possession over the leased object by the lessee, if the leased object causes any personal injury or property loss to a third party, the lessor shall not bear any liability.

Article 247 The lessee shall properly maintain and use the leased object.

The lessee shall perform the obligations for the maintenance of the leased object within the period of its possession.

Article 248 The lessee shall pay the rent as contracted. If the lessee fails to pay the rent within a reasonable period of time after being urged, the lessor may demand the full payment of the rent, or dissolve the contract and take back the leased object.

Article 249 Where the parties stipulate that the lessee shall have the ownership over the leased object after the expiration of the lease term, where the lessee has paid most of the rent but is unable to pay the remaining part, and where the lessor has therefore dissolved the contract and taken back the leased object, the lessee may demand a partial refund if the value of the leased object taken back exceeds the rent in arrears and other expenses.

Article 250 The lessor and the lessee may stipulate the ownership over the leased object at the expiration of the lease term. If the ownership of the leased object is not stipulated or is unclearly

stipulated by the parties, nor can it be determined pursuant to the provisions of Article 61 of this Law, the ownership of the leased object shall belong to the lessor.

## Chapter XV Work Contracts

Article 251 A "work contract" is a contract whereby the contractor, in accordance with the requirements of the client, completes a work and delivers its results and the client pays remuneration.

A contracted work includes such items as processing, manufacturing on order, repair, reproduction, testing and inspection.

Article 252 A work contract contains such clauses as the targeted matter, quantity, quality, remuneration, mode of work, supply of materials, period of performance, and standards and method of inspection.

Article 253 The contractor shall complete the principal part of the work with its own equipment, technology and labor force, unless the parties stipulate otherwise.

If the contractor entrusts the completion of the major part of its contracted work to a third party, the contractor shall be accountable to the client concerning the work results completed by the third party. The client may dissolve the contract if no consent has been obtained from the client in this regard.

Article 254 The contractor may entrust the completion of any auxiliary part of its contracted work to a third party. The contractor shall be accountable to the client concerning the work results completed by the third party, if the contractor entrusts the completion of any auxiliary part of its contracted work to a third party.

Article 255 If the contractor is to provide materials, it shall select and use materials as contracted and accept the inspection of the client.

Article 256 If the client is to provide materials, it shall provide materials as contracted. The contractor shall promptly inspect the materials provided by the client, and, if any unconformity with the agreement is found, the contractor shall promptly tell the client to make replacement, make up the shortage or take other remedial measures.

The contractor may not, without consent, change materials provided by the client nor change accessories and parts requiring no repair.

Article 257 The contractor shall promptly notify the client if it finds that the drawings or technical requirements provided by the client are unreasonable. Where losses are caused to the contractor due to the client's indolence in response or like reasons, the client shall hold the liability for losses.

Article 258 Where the client changes in the course of the contracted work its requirements and thus causes losses to the contractor, the client shall hold liability for losses.

Article 259 If the contracted work requires assistance from the client, the client has the obligation to provide assistance.

Where the client fails to perform its obligation of assistance and makes thus the completion of the contracted work impossible, the contractor may urge the client to perform its obligation within a reasonable period of time, and may also prolong correspondingly the term of performance. If the client still fails to fulfill its obligation beyond the time limit, the contractor may dissolve the contract.

Article 260 The contractor shall accept necessary supervision and inspection of the client in the course of its work. The client may not disturb the normal work of the contractor by its supervision and inspection.

Article 261 Upon completion of its work, the contractor shall deliver to the client the work results and provide it with the necessary technical materials and related quality certificates. The client shall check and accept the work results.

Article 262 Where the work results delivered by the contractor fail to meet the quality requirements, the client may require the contractor to assume the liability for breach of contract in form of repair, reworking, remuneration reduction or compensation for losses.

Article 263 The client shall pay remuneration within the contracted time limit. If the time limit for paying remuneration is not stipulated or is not clearly stipulated, nor can it be determined pursuant to the provisions of Article 61 of this law, the client shall make payment at the time of delivery of the results of the work; and when part of the work results is delivered, the client shall pay remuneration correspondingly.

Article 264 If the client fails to pay remuneration or the prices for materials, the contractor has the right of lien on the work results, unless the parties stipulate otherwise.

Article 265 The contractor shall appropriately preserve the materials provided by the client as well as the completed work results. The contractor shall hold the liability for any damage or loss caused by poor preservation.

Article 266 The contractor shall maintain confidentiality in accordance with the requirements of the client and, without the latter's permission, may not retain copies or technical data.

Article 267 Co-contractors shall bear joint and several liabilities to their client, unless the parties stipulate otherwise.

Article 268 The client may dissolve the work contract at any time, but shall hold the liability for any loss caused thereby to the contractor.

## Chapter XVI Construction Project Contracts

Article 269 A "construction project contract" is a contract whereby the contractor carries out the construction of the project and the contract-offering party pays the price therefor.

Construction project contracts include contracts for project prospecting, designing and construction.

Article 270 Construction project contracts shall be made in written form.

Article 271 Bidding for construction projects shall be carried out in an open, fair and impartial manner in accordance with the provisions of relevant laws.

Article 272 The contract-offering party may enter into a construction project contract with a general contractor, and may also enter into separate contracts for prospecting, designing and construction with the prospecting, designing and construction parties separately. The contract-offering party may not break up one construction project that should be completed by one contractor into several parts and offer them to several contractors.

The general contractor or the prospecting, designing or construction contractor may, subject to consent by the contract-offering party, entrusts the completion of part of its contracted work to a third party. The third party shall assume joint and several liabilities together with the general contractor or the prospecting, engineering or construction contractor to the contract-offering party over the work results of the third party. A contractor may not assign the whole of its contracted construction project to a third party or break up the whole of its contracted construction project into several parts and assign them separately to third parties in the name of subcontracting.

It is forbidden for a contractor to subcontract its projects to a unit without corresponding qualifications. It is forbidden for a subcontractor to re-subcontract its contracted project. The main structure of the construction project must be completed by the contractor itself.

Article 273 Contracts for State key construction projects shall be entered into in accordance with the procedures set forth by the State and such documents as investment plans and feasibility study reports approved by the State.

Article 274 A prospecting or designing contract contains such clauses as the time limit for delivery of relevant basic materials and documents (including budgetary estimates), quality requirements, expenses and other cooperative conditions.

Article 275 A construction contract contains such clauses as the project scope, period for construction, time of commencement and completion of the projects to be delivered in mid course, project quality, costs, delivery time of technical materials, responsibility for the supply of materials and equipment, fund allocation and settlement, project inspection and acceptance upon its completion, range of quality guarantee, quality warranty period, and cooperation between the parties.

Article 276 For any construction projects in which the superintendence system is to be applied, the contract-offering party shall conclude an entrustment contract of superintendence in written form

with the entrusted supervisor. The rights and obligations as well as legal responsibilities of the contract-offering party and the supervisor shall be defined pursuant to the provisions on entrustment contracts of this Law as well as the relevant provisions of other laws and administrative regulations.

Article 277 The contract-offering party may, under the condition of not disturbing the normal operation of the contractor, inspect the progress and quality of the work at any time.

Article 278 Prior to the concealment of a concealed project, the contractor shall notify the contract-offering party for the latter's inspection. If the contract-offering party fails to conduct a prompt inspection, the contractor may extend correspondingly the period for the completion of the project, and may demand compensation for losses caused by work stoppage and workers' forced idleness.

Article 279 When a construction project is completed, the contract-offering party shall undertake promptly the inspection for acceptance in accordance with the construction drawings and descriptions, as well as the criteria for construction project inspection and acceptance and the quality inspection standards issued by the State. Where the project passes the inspection for acceptance, the contract-offering party shall pay the contracted prices and take over the construction project.

A construction project may be delivered and put into use only after it has passed the inspection for acceptance upon completion. Without the inspection for acceptance or failing to pass the inspection, the construction project may not be delivered and put into use.

Article 280 Where losses are caused to a contract-offering party due to the fact that the prospecting or designing does not conform to the quality requirements or that the prospecting or designing documents are not submitted as scheduled, thus delaying the period for construction, the prospecting or designing party shall go on perfecting the prospecting or designing, reduce or waive the prospecting or designing fees and make compensation for the losses.

Article 281 If the quality of a construction project fails to meet the contracted requirements due to reasons attributable to the construction party, the contract-offering party has the right to demand the repair, reworking or reconstruction free of charge by the construction party within a reasonable period of time. If delivery is delayed because of the repair or reworking and reconstruction, the construction party shall bear the liability for breach of contract.

Article 282 If a construction project causes personal injury and property losses due to reasons attributable to the contractor within a reasonable period of use of the project, the contractor shall hold the liability for losses.

Article 283 If the contract-offering party fails to provide raw materials, equipment, sites, funds or technical materials at the contracted time and pursuant to the contracted requirements, the contractor may extend correspondingly the period of construction and has the right to demand compensation for the losses caused by work stoppage and workers' forced idleness.

Article 284 If a construction project is stopped or suspended in mid course due to reasons attributable to the contract-offering party, the contract-offering party shall take measures to make

up for the loss or reduce the loss, and compensate the contractor for any losses and actual expenses caused by work stoppage, workers' forced idleness, back transportation, transfer of machinery equipment and piling up of materials and structural components.

Article 285 Where the contract-offering party alters its plan, provides inaccurate materials or fails to provide as scheduled necessary working conditions for prospecting or designing, thus leading to the redoing or stoppage of the prospecting or designing work, or the revision of the design, the contract-offering party shall raise its payment of fees according to the amount of work actually undertaken by the prospecting or designing party.

Article 286 Where the contract-offering party fails to pay the prices as contracted, the contractor may urge the contract-offering party to effect the payment within a reasonable period of time. Where the contract-offering party still fails to effect the payment at the expiration of that period, the contractor may negotiate with the contract-offering party for converting the construction project into money or may apply to a people's court for the auction of the project according to law, unless the construction project concerned is by nature unsuitable for conversion into money or auction. The payment for the construction of the project shall be effected, in priority, out of the proceeds from the conversion into money or auction of the said project.

Article 287 For questions not regulated by this Chapter, the relevant provisions on work contracts shall apply.

## Chapter XVII Carriage Contracts

### Section I Common Provisions

Article 288 A "carriage contract" is a contract whereby the carrier transports the passenger or goods to the contracted destination from the place of dispatch, and the passenger, or the consignor or consignee pays the fare or the freight.

Article 289 The carrier engaging in public transport may not reject normal and reasonable transport requests of passengers and consignors.

Article 290 The carrier shall safely transport passengers and goods to the contracted destination within the contracted time limit or within a reasonable period of time.

Article 291 The carrier shall transport passengers and goods to the contracted destination via the contracted or the usual transport route.

Article 292 The passenger, consignor or consignee shall pay the fare or the freight. If the carrier does not transport via the contracted route or the usual route and thus increases the fare or the freight, the passenger, consignor or consignee may refuse to pay the extra part of the fare or the freight.

### Section II Passenger Transport Contracts



Article 293 A passenger transport contract is executed at the time when the carrier delivers the ticket to the passenger, unless the parties agree otherwise or follow other trade practices.

Article 294 The passenger shall hold a valid ticket while getting on board for travel. Any passenger who travels on board without a ticket, beyond the paid distance, in a higher class or with an invalid ticket shall make up for the difference in the ticket price, and the carrier may charge an extra fare according to the provisions. Where the passenger refuses to pay the fare accordingly, the carrier may refuse the carriage.

Article 295 A passenger who is unable to get on board at the time indicated by the ticket due to his own fault shall, within the prescribed period of time, undergo the procedures for returning the ticket and getting the refund or making a change of the ticket. If the passenger fails to undergo the refund or change procedures within the prescribed period of time, the carrier may refuse to refund the ticket, and has no more need to undertake the transport obligation.

Article 296 The passenger shall carry baggage within the prescribed quantity limit in transport. A passenger who carries baggage in excess of the gravity limit shall have the baggage checked.

Article 297 The passenger may not carry with him or secretly carry in his baggage any inflammable, explosive, toxic, corrosive and radioactive articles, nor any other dangerous articles that might endanger the safety of persons and property aboard the means of transport, nor other contraband articles.

If a passenger violates the provisions of the preceding paragraph, the carrier may unload the contraband articles or destroy them or submit them to the related departments. If the passenger insists on carrying with him the contraband articles or carrying them in his baggage, the carrier shall refuse the carriage.

Article 298 The carrier shall notify passengers about important matters rendering the transport out of a normal state and matters of attention for a safe transport.

Article 299 The carrier shall transport passengers at the time and in the number of runs or flights indicated by the ticket. The carrier delaying the transport shall, at passengers' requests, arrange another number of runs or flights to transport the passengers or refund their tickets.

Article 300 Where the carrier unilaterally changes the means of transport, thus downgrading the service standards, the carrier shall, at passengers' requests, refund their tickets or reduce the ticket price; where the service standards are upgraded by the change, the fare charged shall not be raised.

Article 301 The carrier shall, in the course of transportation, spare no efforts to rescue and help passengers who suffer acute diseases, commence childbirth or are in danger.

Article 302 The carrier shall hold the liability for the damages arising from the injury or death of a passenger occurring in the course of transportation, unless the injury or death is a result of the passenger's own health condition, or the carrier can prove that the injury or death is caused by the passenger's deliberate intention and gross fault.

The provisions of the preceding paragraph apply also to any passenger exempted from ticket according to provisions, holding a complimentary ticket or permitted by the carrier to travel without tickets.

Article 303 Where passengers' carry-on articles are damaged or lost in the course of transportation and the carrier is at fault, the carrier shall hold the liability for damages.

In case of damage or loss of passengers' checked luggage, the relevant provisions on the freight transport shall apply.

### Section III Freight Transport Contracts

Article 304 The consignor, when consigning goods for transport, shall clearly declare to the carrier all the information necessary for freight transport such as the designation or name of the consignee or the consignee by order, as well as the name, nature, weight and quantity of the goods and place of delivery.

If a loss is caused to the carrier due to the consignor's untrue declaration or omission of substantial information, the consignor shall hold the liability therefor.

Article 305 Where the freight transport is subject to examination, approval or inspection formalities, the consignor shall submit to the carrier the documents showing the completion of the relevant formalities.

Article 306 The consignor shall package the goods in the contracted manner. If the packaging manner is not stipulated or not clearly stipulated, the provisions of Article 156 of this Law shall apply.

Where the consignor violates the provisions of the preceding paragraph, the carrier may refuse the transport.

Article 307 While consigning for transport such dangerous goods as inflammable, explosive, toxic, corrosive or radioactive articles, the consignor shall, in accordance with the regulations of the State on the transport of dangerous goods, properly package the dangerous goods, affix thereto warning signs and labels, and submit to the carrier written documents concerning the name, nature and precautional measures relevant to the dangerous goods.

Where the consignor violates the provisions of the preceding paragraph, the carrier may refuse the transport, or may also take appropriate measures to prevent losses, and expenses thus incurred shall be borne by the consignor.

Article 308 Before the carrier delivers the goods to the consignee, the consignor may ask the carrier to stop the transportation, return the goods, change the place of destination, or deliver the goods to another consignee. However, the consignor shall compensate for the losses thus caused to the carrier.

Article 309 When the goods are transported to the place of destination and the carrier knows the consignee, the carrier shall promptly notify the consignee, and the consignee shall promptly take

delivery of the goods. If the consignee delays in taking delivery of the goods, the consignee shall pay storage and other fees to the carrier.

Article 310 When taking delivery of the goods, the consignee shall inspect the goods within the contracted time limit. If the time limit for inspection of the goods is not stipulated or is not clearly stipulated, nor can it be determined pursuant to the provisions of Article 61 of this Law, the consignee shall inspect the goods within a reasonable period of time. If the consignee does not voice any complaint about the quantity, damage or loss of the goods within the stipulated time limit or within a reasonable period of time, the silence shall be deemed as a preliminary evidence that the carrier has delivered the goods in accordance with the transport documents.

Article 311 The carrier shall hold the liability for any damage or loss of goods occurring in the course of transport. However, if the carrier proves that the damage or the loss of the goods is caused by force majeure, the natural property of the goods or reasonable wear and tear, or is caused by the negligence of the consignor or the consignee, the carrier shall not hold the liability for damages.

Article 312 If the parties have agreed on the amount of compensation for damage or loss of the goods, their agreement shall apply; if the amount of compensation is not stipulated or not clearly stipulated by the parties, nor can it be determined pursuant to the provisions of Article 61 of this Law, the amount shall be calculated at the market price of the place of delivery when the goods are delivered or ought to be delivered. If laws and administrative regulations stipulate otherwise concerning the calculation method of the compensation amount and the limit of the compensation amount, such stipulations shall govern.

Article 313 If two or more carriers engage in a connected transport of the same mode, the carrier which concludes the contract with the consignor shall be responsible for the entire process of transport. If a loss occurs at one transportation section, the carrier which concludes the contract with the consignor and the carrier in the said section shall bear joint and several liabilities.

Article 314 In the event that goods are lost in the course of transport due to force majeure, if the freight has not yet been collected, the carrier may not demand the payment of the freight; if the freight has already been collected, the consignor may ask for a refund.

Article 315 If the consignor or consignee does not pay freight, storage fees and other fees of transportation, the carrier has the right of lien on the goods transported, unless the parties stipulate otherwise.

Article 316 If the consignee is unknown or the consignee refuses to take delivery of the goods without justifiable reasons, the carrier may have the goods deposited in accordance with the provisions of Article 101 of this Law.

#### Section IV Multi-modal Transport Contracts

Article 317 The operator of multi-modal transport is responsible for fulfilling or organizing the fulfillment of a multi-modal transport contract, enjoy the rights of a carrier and assume its obligations throughout the entire transport process.

Article 318 The operator of multi-modal transport may stipulate with the carriers of the different sections of the multi-modal transport on their respective responsibility for transport in each section under the multi-modal transport contract. However, such stipulations shall not affect the obligations of the operator for the entire transport process.

Article 319 The operator of multi-modal transport shall, when receiving the goods consigned for transport by the consignor, issue multi-modal transport documents. At the request of the consignor, the multi-modal transport documents may be transferable or non-transferable.

Article 320 If losses are caused to the operator of multi-modal transport due to the fault of the consignor at the time of consigning the goods for transport, even if the consignor has transferred its multi-modal transport documents, the consignor shall still hold the liability for losses.

Article 321 If damage or loss of goods occurs in one section of the multi-modal transport, the provisions of related laws regulating the transport modes of the section shall apply to the liability for damages and its limits to be held by the operator of multi-modal transport. If it is impossible to determine in which section of transport such damage or loss has occurred, the liability for damages shall be governed by the provisions of this Chapter.

## Chapter XVIII Technology Contracts

### Section I Common Provisions

Article 322 A technology contract is a contract made by the parties to define their rights and obligations for technology development, transfer, consultation or service.

Article 323 The making of a technology contract shall be conducive to the advance of science and technology, and shall accelerate the transformation, application and dissemination of the results achieved in science and technology.

Article 324 The contents of a technology contract shall be stipulated by the parties, and generally, shall contain the following clauses:

- (1) name of the project;
- (2) contents, scope and requirements of the targeted matter;
- (3) plan, schedule, period, place, area and manner of performance;
- (4) confidentiality of technical information and materials;
- (5) sharing of risk liabilities;
- (6) ownership over technological results and proceeds distribution method;
- (7) criteria and method of the inspection for acceptance;

- (8) price, remuneration or royalty and methods of payment thereof;
- (9) calculation method of penalty for breach of contract or compensation for losses;
- (10) method for dispute settlement; and
- (11) definition of technical terms and expressions.

Materials such as technical background, feasibility studies and technical evaluation reports, project task paper and plans, technical standards, technical norms, original design and technique documents, as well as other technical documents which are relevant to the performance of the contract may, as agreed upon by the parties, constitute component parts of the contract,

If a technology contract involves any patent, it shall indicate the designation of the invention or creation, the applicant and the patentee, the date of application, application number, patent number and duration of the patent rights.

Article 325 The methods of payment for prices, remuneration and royalty in a technology contract shall be stipulated by the parties, and they may adopt the methods of overall computation and lump payment or overall computation and installment payment, and may also adopt the method of percentage-deduction payment or such payment plus an anticipated initial payment.

When the percentage-deduction payment is agreed upon, such payment may be calculated at a specific percentage of the price of the product, of the newly-increased output value and profits attained from the application of patents and exploitation of technological know-how, or of the sales revenue of the product, and may also be computed according to the other methods agreed upon. The percentage of such payment may be a fixed percentage, or an annual progressively increased or decreased percentage.

When payment by deducting a percentage is agreed upon, the parties shall specify in the contract the method for checking and consulting the relevant accounting books.

Article 326 If the right to use or transfer of a service-related technological result belongs to a legal person or any other organization, the legal person or that organization may conclude a technology contract on the said service-related technological result. The legal person and or that organization shall deduct a certain percentage of the proceeds from using and transferring the service-related technological result so as to give rewards or remuneration to the person(s) achieving the service-related technological result. When the legal person or that organization concludes a technology contract to transfer the service-related technological result, the person(s) achieving the service-related technological result shall have the priority to acquire the transfer on equal conditions.

"Service-related technological result" refers to a technological result achieved in the performance of a task assigned by the legal person or any other organization, or achieved primarily by making use of the materials and technical conditions of the legal person or any other organization.

Article 327 The right of use or transfer of a non-service-related technological result belongs to the person(s) achieving the result, and the person(s) achieving the non-service-related technological result may conclude a technology contract on that result.

Article 328 The person achieving a technological result has the right to indicate on the documents relevant to the technological result that he is the person achieving the result, as well as the right to obtain certificates of honor and rewards.

Article 329 Any technology contract that illegally monopolies technologies, impedes technological progress or infringe upon technological results of others is null and void.

## Section II Technological Development Contracts

Article 330 A technological development contract is a contract made by the parties concerning the research and development of any new technology, new product, new technique or new material, as well as the system thereof.

Technological development contracts include commissioned development contracts and cooperative development contracts.

Technological development contracts shall be in written form.

Contracts concluded by the parties on the application and transformation of any technological result with a value for industrial use shall be made with reference to the provisions for the technological development contracts.

Article 331 The client of a commissioned development contract shall pay funds for research and development and remuneration as contracted, provide technical materials and firsthand data, complete all cooperative work and accept the results of the research and development.

Article 332 The researcher-developer of a commissioned development contract shall work out and implement research and development plan in accordance with the contract, rationally use the research and development funds, complete the research and development work as scheduled, deliver the results of research and development, and provide related technical materials and necessary technical instructions so as to help the client to master the research and development results.

Article 333 Where the client violates the contract and causes thus the standstill, delay or failure of the research and development work, the client shall bear the liability for breach of contract.

Article 334 Where the researcher-developer violates the contract and causes thus the standstill, delay or failure of the research and development work, the researcher-developer shall bear the liability for breach of contract.

Article 335 The parties to a cooperative development contract shall make investments as contracted, including investment in the form of technology, participate in the research and development work divided into them respectively, and cooperate and coordinate in the research and development.

Article 336 Where either party to a cooperative development contract violates the contract and causes thus the standstill, delay or failure of the research and development work, the party in question shall bear the liability for breach of contract.

Article 337 Where the technology stipulated as the targeted matter of a technology development contract is revealed to the public by others, rendering thus the performance of the contract meaningless, the parties may dissolve the contract.

Article 338 Where insurmountable technical difficulties arising in the performance of a technology development contract lead to the total or partial failure of the research and development, the risk liability shall be stipulated by the parties. If the risk liability is not stipulated or not clearly stipulated, nor can it be determined pursuant to the provisions of Article 61 of this Law, the parties shall reasonably share the liability.

Where either party finds, as specified in the preceding paragraph, that a situation may cause the total or partial failure of the research and development, the party shall promptly notify the other party and take appropriate measures to minimize the loss. Where the party fails to promptly inform and take appropriate measures and causes thus the aggravation of the loss, the party in question shall be liable for the aggravated part of the loss.

Article 339 For any invention or creation achieved through the commissioned development, the right to apply for patents belongs to the researcher-developer, unless the parties stipulate otherwise. If the researcher-developer obtains the patent right, the client may exploit the patent free of charge.

If the researcher-developer transfers its right of application for patent, the client enjoys the priority to acquire the transfer on equal conditions.

Article 340 For any invention and creation achieved through the cooperative development, the right of application for patent belongs jointly to all parties to the cooperative development, unless the parties stipulate otherwise. If one of the parties transfers its joint right of application for patent, any other party enjoys the priority to acquire the transfer on equal conditions.

If a party to a cooperative development waives its joint right of application for patent, any or all of the other parties to the cooperative development may make exclusive or joint application. If the patent right is obtained by the applicant(s), the party that has waived its right of application may exploit the patent free of charge.

If one party to a cooperative development does not agree to apply for patent, the other party or parties may not apply therefor.

Article 341 The right to use, the right to transfer and the method of proceeds distribution of the secret technological results achieved through the commissioned development or cooperative development shall be stipulated by the parties. If they are not stipulated or are not clearly stipulated, nor can they be determined pursuant to the provisions of Article 61 of this Law, all the parties concerned shall enjoy the rights to use and to transfer. However, the researcher-developer of a commissioned development may not transfer the research and development results to a third party before their delivery to the client.

### Section III Technological Transfer Contracts

Article 342 Technological transfer contracts include contracts for the transfer of patent right, transfer of the right to apply for patent, transfer of technological know-how and license for exploitation of patents.

Technological transfer contracts shall be in written form.

Article 343 A technological transfer contract may stipulate the scope for the transferor and transferee to exploit the patent or to use the technological know-how, but may not restrict technological competition and technological development.

Article 344 A patent exploitation license contract shall be valid only within the period of continued existence of the patent. If the valid duration of the patent right expires or the patent right is declared invalid, the patentee may not conclude a patent exploitation license contract relating to that patent with others.

Article 345 The transferor in a patent exploitation license contract shall, as contracted, permit the license transferee to exploit the patent, deliver technical materials related to patent exploitation and provide necessary technical guidance.

Article 346 The license transferee in a patent exploitation license contract shall exploit the patent as contracted and may not allow a third party outside the contract to exploit the patent; and shall pay royalties as contracted.

Article 347 The transferor in a technical know-how transfer contract shall, as contracted, provide technical materials, give technical guidance, guarantee the practical applicability and reliability of the technology, and maintain confidentiality.

Article 348 The transferee in a technical know-how transfer contract shall, as contracted, utilize the technology, pay royalties, and maintain confidentiality.

Article 349 The transferor in a technological transfer contract shall guarantee its legitimate ownership over the technology provided and guarantee the technology provided to be complete, errorless, effective, and capable of attaining the contracted goal.

Article 350 The transferee in a technological transfer contract shall, in accordance with the contracted scope and period of time, maintain confidentiality regarding the parts of the technology provided by the transferor and not yet been disclosed to the public.

Article 351 The transferor that fails to transfer the technology as contracted shall refund the royalties in part or in full and bear the liability for breach of contract. The party that exploits a patent or utilizes technical know-how beyond the contracted scope, or allows an unauthorized third party to exploit the patent or utilize the technical know-how in violation of the contract shall stop its contract-breaching acts and bear the liability for breach of contract. The party that violates the contracted obligation of maintaining confidentiality shall bear the liability for breach of contract.

Article 352 The transferee that fails to pay royalties as contracted shall make up the payment of royalties and pay a penalty for breach of contract as contracted, and, if failing to make up the



payment of royalties and pay the penalty, shall stop its exploitation of the patent or utilization of the technical know-how, return the technical materials and bear the liability for breach of contract. The transferee that exploits the patent or utilizes the technical know-how in excess of the contracted scope or allows a third party, without the consent of the transferor, to exploit the patent or to utilize the technical know-how shall stop its contract-breaching acts and bear liability for breach of contract. The transferee that violates its contracted obligation of maintaining confidentiality shall bear the liability for breach of contract.

Article 353 Where the exploitation of the patent or utilization of the technical know-how by the transferee as contracted infringes upon the legitimate rights and interests of others, the liability therefor shall be borne by the transferor, unless the parties stipulate otherwise.

Article 354 The parties to a technological transfer contract may, in accordance with the principle of mutual benefit, stipulate the method for sharing any subsequently improved technological result obtained from the patent exploitation or utilization of the technical know-how. Where such method is not stipulated or not clearly stipulated, nor can it be determined pursuant to the provisions of Article 61 of this Law, the subsequently improved technological result achieved by one party may not be shared by any of the other parties.

Article 355 Where laws and administrative regulations stipulate otherwise on contracts for technology import and export or on contracts for patents and patent applications, the relevant provisions thereof shall govern.

#### Section IV Technical Consultation Contracts and Technical Service Contracts

Article 356 "Technical consultation contracts" include contracts for providing reports concerning a specific technological project on such subjects as feasibility study, technical projection, special technological investigations, and analysis and evaluation.

A "technical service contract" refers to a contract whereby one party uses its technical knowledge to solve specific technical problems for the other party, while not embracing the construction project contract and the work contract.

Article 357 The client to a technical consultation contract shall, as contracted, state the issues for consultation, provide background technical information and related technical materials and data, and accept the work results of the agent and pay remuneration.

Article 358 The agent to a technical consultation contract shall complete the consultation report or solve the problems within the contracted time limit, and the consultation report submitted shall meet the stipulated requirements.

Article 359 If the client to a technical consultation contract fails to provide necessary materials and data as contracted and thus affects the progress and quality of the work, or the client fails to accept the work results or delays the acceptance, the paid remuneration may not be reimbursed, while the unpaid remuneration shall be paid.

The agent to a technical consultation contract that fails to submit the consultation report as scheduled or submits a report failing to meet the contracted requirements shall bear the liability for breach of contract in form of reduction or waiver of its remuneration.

Any losses caused by the decision made by the client to a technical consultation contract according to the agent's consultation report and advice that meet the contracted requirements shall be borne by the client, unless the parties stipulate otherwise.

Article 360 The client to a technical service contract shall, as contracted, provide working conditions, accomplish cooperative work, accept the results of the work and pay remuneration.

Article 361 The agent to a technical service contract shall, as contracted, complete the service items, solve technical problems, guarantee the quality of the work, and impart the knowledge for solving technical problems.

Article 362 Where the client to a technical service contract fails to perform its contracted obligations or performs its obligations in a manner inconsistent with the contracted requirements, thus affecting the progress and quality of the work, or fails to accept the work results or delays its acceptance, the paid remuneration may not be reimbursed, while the unpaid remuneration shall be paid.

The agent to a technical service contract that fails to complete the service work as contracted shall bear the liability for breach of contract in the form of waiver of its remuneration, and etc.

Article 363 In the course of the performance of a technical consultation contract or a technical service contract, new technological results achieved by the agent with technical materials and working conditions provided by the client shall belong to the agent. New technological results achieved by the client on the basis of the work results of the agent shall belong to the client. If the parties have agreed otherwise, their agreement shall govern.

Article 364 Where laws and administrative regulations stipulate otherwise on technology brokerage contracts and technical training contracts, the relevant provisions thereof shall govern.

## Chapter XIX Contracts of Deposit

Article 365 A "contract of deposit" is a contract whereby the depository safekeeps the articles delivered by the depositor and returns the said article.

Article 366 The depositor shall pay the deposit fee to the depository as contracted.

If the deposit fee is not stipulated or is not clearly stipulated by the parties, nor can it be determined pursuant to the provisions of Article 61 of this Law, the deposit shall be gratis.

Article 367 A contract of deposit shall be executed upon delivery of the deposited article unless the parties stipulate otherwise.

Article 368 Where the depositor delivers the deposited article to the depository, the latter shall issue a deposit certificate, unless there are other trade practices.

Article 369 The depository shall properly safekeep the article.

The parties may stipulate the place and method of safekeeping. Except in case of emergency or in the interests of the depositor, the place and method for safekeeping may not be changed unilaterally.

Article 370 If the article delivered for safekeeping by a depositor has defects or needs by nature special safekeeping measures, the depositor shall notify the depository about the relevant information. Where the depositor fails to give information resulting thus in loss or damage to the article, the depository shall not hold the liability for damages; if the depository suffers a loss therefrom, the depositor shall be liable for the loss unless the depository is aware or ought to be aware of the situation but fails to take remedial measures.

Article 371 The depository may not transfer the article to a third party for deposit, unless the parties stipulate otherwise.

A depository that violates the provisions of the preceding paragraph, transfers the article to a third party for deposit, and thus causes damage or loss to the article shall hold the liability for damages.

Article 372 The depository may not use nor permit a third party to use the deposited article, unless the parties stipulate otherwise.

Article 373 Where a third party claims rights over the deposited articles, the depository shall perform the obligation of returning the article to the depositor, except that the deposited article is put under preservation or execution according to law.

Where a third party initiates an action against the depository or applies for the distraint of the deposited article, the depository shall promptly notify the depositor.

Article 374 Where damage or loss of the deposited article is caused within the period of safekeeping due to improper safekeeping by the depository, the depository shall hold the liability for damages. However, if the deposit is non-gratis and the depository can prove itself free from any gross negligence, the depository shall not hold the liability for damages.

Article 375 The depositor shall declare to the depository where currencies, negotiable securities or other valuable objects are deposited, and the depository shall accept them after check or seal them. Where the said deposited article is damaged or lost in the absence of a declaration from the depositor, the depository may make a compensation at a rate for general articles.

Article 376 The depositor may collect its deposited article at any time.

Where the deposit period is not stipulated or unclearly stipulated by the parties, the depository may, at any time, ask the depositor to collect the deposited article; where the deposit period is stipulated, the depository may not ask the depositor to collect the deposited article ahead of time without a particular reason.

Article 377 When the deposit period expires or the depositor collects the deposited article ahead of schedule, the depository shall return the article together with its accrued interest to the depositor.

Article 378 Where a depository safekeeps currencies, the depository may return the same kind of currencies in same amount. Where other replaceable articles are deposited, the depository may return them in same kind, same quality and same quantity according to the contract.

Article 379 Under a contract for non-gratuitous deposit, the depositor shall pay a deposit fee to the depository at a contracted time.

Where the time limit for payment is not stipulated or is not clearly stipulated by the parties, nor can it be determined pursuant to the provisions of Article 61 of this Law, the payment shall be made at the time of collecting the deposited article.

Article 380 If the depositor fails to pay the deposit fee and other charges, the depository has the right of lien on the deposited article, unless the parties stipulate otherwise.

## Chapter XX Warehousing Contracts

Article 381 A warehousing contract is a contract whereby the depository stores the goods delivered by the depositor and the depositor pays the warehousing fee.

Article 382 A warehousing contract becomes valid when it is executed.

Article 383 Where dangerous goods such as inflammable, explosive, toxic, corrosive and radioactive or perishable articles are to be warehoused, the depositor shall state the nature of the said goods or articles and provide relevant information and materials.

If the depositor violates the provisions of the preceding paragraph, the depository may refuse to accept the goods for warehousing, or may take appropriate measures to avoid the occurrence of losses, and the expenses thus incurred shall be borne by the depositor.

The depository that warehouses dangerous goods such as inflammable, explosive, toxic, corrosive and radioactive materials shall have corresponding warehousing conditions.

Article 384 The depository shall check the goods as contracted before accepting the warehousing. If the depository finds during the check any inconsistency in the goods to be stored with the contract, the depository shall promptly notify the depositor. Where the warehoused goods are found, after being checked and accepted by the depository, not in conformity with the contract in terms of varieties, quantity or quality, the depository shall hold the liability for damages.

Article 385 Upon delivering of the goods by the depositor for storage, the depository shall issue a warehousing certificate.

Article 386 The depository shall sign or stamp the warehousing certificate. A warehousing certificate shall contain the following particulars:

1. designation or name and address of the depositor;
2. variety, quantity, quality, package, number of pieces and marks of the stored goods;
3. standards for damage and spoilage of the stored goods;
4. warehousing site;
5. warehousing period;
6. warehousing fee;
7. the insured amount, duration of insurance and designation of the insurance company if the goods to be stored have been insured; and
8. name of the issuer and the place and date of issuance.

Article 387 The warehousing certificate is the proof for collecting the stored goods. Where the depositor or the holder of the warehousing certificate endorses the certificate which is thus signed or stamped by the depository, the right to collect the stored goods may be transferred.

Article 388 The depository shall, at request of the depositor or the holder of the warehousing certificate, allow the depositor or the holder to examine the stored goods or to take samples.

Article 389 Where the depository finds that the warehoused goods deteriorate or suffer from other damages, the depository shall promptly inform the depositor or the holder of the warehousing certificate.

Article 390 Where the depository finds that the warehoused goods deteriorate or suffer from other damages, which endangers the safety and normal warehousing of other warehoused goods, it shall urge the depositor or the holder of the warehousing certificate to make necessary disposal. In case of emergency, the depository may make necessary disposal, but shall promptly notify the depositor or the holder of the warehousing certificate about the situation afterwards.

Article 391 If the warehousing period is not stipulated or is unclearly stipulated by the parties, the depositor or the holder of the warehousing certificate may collect at any time the warehoused goods, and the depository may also ask at any time the depositor to collect the warehoused goods but a reasonable period of time necessary for preparations shall be given.

Article 392 Where the warehousing period expires, the depositor or the holder of the warehousing certificate shall collect the stored goods on the strength of the warehousing certificate. If the depositor or the holder of the warehousing certificate delays in collecting the stored goods, extra warehousing fees shall be charged; if the goods are collected before the expiration, the warehousing fees shall not be reduced.

Article 393 Where the depositor or the holder of the warehousing certificate fails to collect the stored goods at expiration of the warehousing period, the depository may urge the depositor or the holder of the warehousing certificate to collect the goods within a reasonable period of time; if

the depositor or the holder still fails to collect the goods beyond the reasonable period, the depository may have the stored goods deposited.

Article 394 If damages or losses caused to the stored goods are due to improper warehousing by the depository within the warehousing period, the depository shall hold the liability for damages.

If the deterioration or damage of the stored goods is due to the nature of the goods, the failure of their packaging to meet the requirements or the overrun of their valid storage period, the depository shall not be liable therefor.

Article 395 For matters not regulated by this Chapter, the relevant provisions on the contracts of deposit shall apply.

## Chapter XXI Entrustment Contract

Article 396 An entrustment contract is a contract whereby the principal and the agent agree that the agent shall handle the affairs of the principal.

Article 397 The principal may specifically authorize the agent to handle one or several affairs, and may also generally authorize the agent to handle all affairs.

Article 398 The principal shall pay in advance the expenses for handling the entrusted affairs. If the agent pays for the principal necessary expenses in handling entrusted affairs, the principal shall repay the expenses as well as the interest accrued.

Article 399 The agent shall handle the entrusted affairs in accordance with the instructions of the principal. If it is necessary to modify the instructions of the principal, the modification shall be approved by the principal; if it is difficult to contact the principal in an emergency, the agent shall properly handle the entrusted affairs, and shall promptly inform the principal of the situation afterwards.

Article 400 The agent shall handle in person the entrusted affairs. With the consent of the principal, the agent may sub-entrust a third party. If the sub-entrustment obtains consent, the principal may directly instruct the third party sub-entrusted on an entrusted affair, and the agent shall only be liable for the choice of the third party and for the instructions given by the agent to the third party. If the sub-entrustment does not obtain consent, the agent shall be liable for any acts of the sub-entrusted third party, except in case of emergency, a sub-entrustment for agent to protect the interests of the principal.

Article 401 The agent shall, at the request of the principal, report on the situation of the entrusted affairs handled. Upon termination of the entrustment contract, the agent shall report the result of the entrusted affairs handled.

Article 402 Where the agent enters into a contract with a third party under the agent's name within the scope of authorization by the principal, and if the third party is aware of the proxy relationship

between the agent and the principal, the said contract shall directly bind the principal and the third party, unless truthful evidence proves that the said contract binds only the agent and the third party.

Article 403 Under a contract concluded by the agent in the agent's name with a third party that is not aware of the proxy relationship between the agent and the principal, when the agent fails to perform obligations toward the principal because of the third party, the agent shall disclose the third party to the principal, and the principal may then exercise the rights of the agent vis-a-vis the third party, except that the third party is unwilling to enter into the contract if it is aware of the principal while making the contract with the agent.

Where the agent fails to perform obligations towards the third party because of the principal, the agent shall disclose the principal to the third party, and the third party may then choose either the agent or the principal as the counterpart to claim its rights. However, the third party may not change the counterpart once chosen.

Where the principal exercises the rights of the agent vis-a-vis the third party, the third party may address its plea against the agent to the principal. When the third party chooses the principal as the counterpart, the principal may address to the third party the principal's plea against the agent as well as the agent's plea against the third party.

Article 404 The agent shall hand over to the principal any property acquired in handling the entrusted affairs.

Article 405 When the agent has accomplished the entrusted affairs, the principal shall pay remuneration to the agent. If the entrustment contract is dissolved or the entrusted affairs can not be accomplished due to reasons not attributable to the agent, the principal shall pay corresponding remuneration to the agent. If the parties have stipulated otherwise, such stipulations shall govern.

Article 406 Under a non-gratuitous entrustment contract where any loss is caused to the principal due to negligence of the agent, the principal may demand compensation therefor. Under a gratuitous entrustment contract where any loss is caused to the principal due to deliberate intention or gross fault of the agent, the principal may demand compensation therefor.

Where the agent acts beyond the authorization and causes thus losses to the principal, the agent shall make compensation therefor.

Article 407 If the agent suffers a loss in handling the entrusted affairs not due to reasons attributable to the agent, compensation therefor may be demanded from the principal.

Article 408 The principal may, with consent of the agent, authorize a third party to handle entrusted affairs in addition to the agent. If a loss is thus caused to the agent, the agent may demand compensation therefor from the principal.

Article 409 If two or more agents jointly handle the entrusted affairs, they shall bear joint and several liabilities.

Article 410 The principal or the agent may dissolve the entrustment contract at any time. If the dissolution of the contract by a party causes losses to the other party, the dissolving party shall compensate for the losses, except for reasons not attributable to that party.

Article 411 An entrustment contract shall terminate when either the principal or the agent dies, loses capacity of civil conduct or goes bankrupt, except in the event that the parties stipulate otherwise or it is inappropriate to terminate the contract due to the nature of the entrusted affairs.

Article 412 Where the termination of an entrustment contract is resulted from the death, loss of capacity of civil conduct or bankruptcy of the principal and will impair the interests of the principal, the agent shall continue to handle the entrusted affairs till the heir, legal agent or liquidation organization of the principal takes over the entrusted affairs.

Article 413 If the death, loss of capacity of civil conduct or bankruptcy of the agent leads to the termination of an entrustment contract, the heir, the legal agent or the liquidation organization of the agent shall promptly inform the principal. If the termination of the entrustment contract will impair the interests of the principal, the heir, the legal agent or the liquidation organization of the agent shall take necessary measures before the principal makes arrangement to deal with the aftermath.

## Chapter XXII Brokerage Contracts

Article 414 A brokerage contract is a contract whereby the broker in its own name engages in trade activities for the truster and the truster pays remuneration therefor.

Article 415 Expenses inflicted by the broker in handling the entrusted affairs shall be borne by the broker, unless the parties stipulate otherwise.

Article 416 If the broker possesses the commissioned articles, the broker shall properly safekeep the articles.

Article 417 If the commissioned articles have defects or are vulnerable to degeneration or deterioration at the time when they are delivered to the broker, the broker may, with the consent of the truster, dispose of the articles; if the broker is unable to make prompt contact with the truster, the broker may dispose of the articles in a proper manner.

Article 418 If a broker sells at a price lower than the price set by the truster or buys at a price higher than the price set by the truster, the broker shall obtain the consent of the truster. If a deal is made without the consent of the truster, the broker shall make up for the price difference and the said deal shall be effective for the truster.

If a broker sells at a price higher than the price set by the truster or buys at a price lower than the price set by the truster, remuneration may be increased as contracted. If the increase is not stipulated or is not clearly stipulated, nor can it be determined pursuant to the provisions of Article 61 of this Law, the benefits involved shall belong to the truster.



If the trustor has given special instructions regarding price, the broker may not sell or buy contrary to the said instructions.

Article 419 If the broker buys or sells commodities at a market price, unless the trustor indicates otherwise, the broker itself may serve as the buyer or the seller.

Despite the conditions stipulated in the preceding paragraph, the broker may still ask the trustor to pay remuneration.

Article 420 If the broker buys a commissioned article pursuant to the contract, the trustor shall accept the article in a timely manner. If, after being urged by the broker, the trustor refuses to accept the article without a justifiable reason, the broker may have the commissioned article deposited in accordance with the provisions of Article 101 of this Law.

If a commissioned article cannot be sold or the trustor withdraws the commissioned sale, and if the trustor after being urged by the broker fails to retrieve or dispose of the said article, the broker may have the commissioned article deposited pursuant to the provisions of Article 101 of this Law.

Article 421 A broker that enters into a contract with a third party shall directly enjoy the rights and bear the responsibilities under that contract.

Where the third party fails to fulfill the contracted obligations and causes thus losses to the trustor, the broker shall be liable therefor, unless the broker and the trustor stipulate otherwise.

Article 422 Where the broker has accomplished the commissioned affairs in full or in part, the trustor shall pay remuneration accordingly. If the trustor fails to pay remuneration as scheduled, the broker shall enjoy the right of lien on the commissioned articles, unless the parties stipulate otherwise.

Article 423 For questions not regulated by this Chapter, the relevant provisions on entrustment contracts shall apply.

## Chapter XXIII Intermediation Contracts

Article 424 An intermediation contract is a contract whereby the middleman reports to the trustor the opportunity for making a contract or provides intermediating services for the making of a contract, and the trustor pays remuneration therefor.

Article 425 The middleman shall truthfully report to the trustor matters related to the making of a contract.

If the middleman intentionally conceals important facts in relation to the making of the contract or provides untrue information and thus impairs the interests of the trustor, the middleman may not claim remuneration and shall hold the liability for damages.

Article 426 If the middleman contributes to the making of a contract, the truster shall pay remuneration as contracted. If the remuneration for the middleman is not stipulated or not clearly stipulated, nor can it be determined pursuant to the provisions of Article 61 of this Law, the remuneration shall be reasonably determined in accordance with the middleman's services. If the intermediating services provided by the middleman prompts the making of a contract, the parties to the said contract shall equally share the disbursement of the remuneration to the middleman.

In prompting the making of a contract, the expenses incurred in the intermediating activities shall be borne by the middleman.

Article 427 If the middleman fails to prompt the making of a contract, the middleman may not demand the payment of remuneration, but may ask the truster to pay the necessary expenses incurred in the intermediating activities.

#### Supplementary Provisions

Article 428 This Law shall go into effect as of October 1, 1999. The Economic Contract Law of the People's Republic of China, the Law of the People's Republic of China on Economic Contracts Involving Foreign Interest and the Law of the People's Republic of China on Technology Contracts shall be simultaneously annulled.

## **Law of the People's Republic of China on Negotiable Instruments**

Adopted at the 13th Meeting of the Standing Committee of the Eighth National People's Congress on May 10, 1995, promulgated by Order No. 49 of the President of the People's Republic of China on May 10, 1995, and amended according to the Decision of the Standing Committee of the Tenth National People's Congress on Amending the Law of the People's Republic of China on Negotiable Instruments adopted at its 11th Meeting on August 28, 2004

### Contents

#### Chapter I General Provisions

#### Chapter II Bills of Exchange

##### Section 1 Issue

##### Section 2 Endorsement

##### Section 3 Acceptance

##### Section 4 Guaranty

##### Section 5 Payment

##### Section 6 Right of Recourse

#### Chapter III Promissory Notes

#### Chapter IV Cheques

#### Chapter V Application of Law to Negotiable Instruments Involving Foreign Elements

#### Chapter VI Legal Responsibility

#### Chapter VII Supplementary Provisions

#### Chapter I General Provisions

Article 1 This Law is enacted to regulate acts involving negotiable instruments, protect the lawful rights and interests of parties engaged in activities involving negotiable instruments, maintain public and economic order and promote the development of the socialist market economy.

Article 2 This Law shall be applicable to activities, involving negotiable instruments, that are carried on within the territory of the People's Republic of China.

The term “negotiable instrument” as used in this Law means bill of exchange, promissory note and cheque.

Article 3 In activities involving negotiable instruments, people shall comply with laws and administrative regulations and shall not jeopardize public interests.

Article 4 When making a negotiable instrument, the drawer shall sign it pursuant to the requirements prescribed by law and shall be liable according to its tenor.

When exercising the rights on a negotiable instrument, the holder shall sign it according to legal procedures and present it.

Other debtors signing the instrument shall be liable according to its tenor.

The right on a negotiable instrument as used in this Law means the right of a holder to demand from the person liable for the negotiable instrument payment of the sum payable by the instrument, including the right of claim for payment and the right of recourse.

Liability on a negotiable instrument as used in this Law means the obligation of a debtor to pay the sum payable by the instrument to the holder.

Article 5 A party to a negotiable instrument may authorize his agent to sign the instrument and the agency relationship shall be indicated thereon.

A person who without authorization signs a negotiable instrument in the name of an agent shall be liable for the instrument. If an agent goes beyond the authorization, he shall be liable for the instrument to the extent where he exceeds the authorization.

Article 6 If a person having no capacity or limited capacity for civil acts signs a negotiable instrument, the signature shall be null and void, but this shall not affect the effect of others' signatures.

Article 7 The signature on a negotiable instrument means an autograph, a seal or an autograph accompanied by a seal.

The signature put by a legal person or another entity issuing the negotiable instrument means the seal of the legal person or the entity accompanied by the signature of its legal representative or authorized agent.

The signature on a negotiable instrument shall be the true name of the party thereto.

Article 8 The sum on a negotiable instrument shall be specified in both capital Chinese characters and numerical figures, the two must be exactly the same. Otherwise, the instrument shall be null and void.

Article 9 The particulars specified on a negotiable instrument shall be in conformity with the provisions of this Law.

The sum, date and the name of the payee of a negotiable instrument shall not be altered. An instrument with any alteration is null and void.

Other particulars on a negotiable instrument may be altered by the person who recorded them , but he shall verify the alterations by putting his signature thereto.

Article 10 The issue, acquisition and negotiation of an instrument shall follow the principle of good faith and reflect the true relationship of transaction and between the creditor and the debtor.

A negotiable instrument shall be acquired by payment of consideration, that is, the price corresponding to what is agreed upon by the two parties to the instrument.

Article 11 Acquisition of a negotiable instrument through taxation, inheritance or donation which, according to law, may be realized without payment shall be exempted from payment of consideration. However, the holder's rights to the instrument shall not exceed those of his prior parties thereto.

The term "prior parties" means other persons liable for a negotiable instrument who put their signatures thereon prior to the current signer or holder.

Article 12 A person who acquires a negotiable instrument by means of fraud, theft, or coercion, or, with knowledge of the aforementioned situations, acquires the instrument out of ill intention shall have no right thereon.

A holder who, by gross negligence, acquires a negotiable instrument that is not in conformity with the provisions of this Law, shall have no right thereon, either.

Article 13 A person liable for a negotiable instrument may not set up against the holder such defenses that are available as between himself and the drawer or between himself and the holder's prior party or parties, unless the current holder acquires the instrument with knowledge of the defenses.

A person liable for a negotiable instrument may set up defenses against the holder who has a direct creditor-debtor relationship with him and does not perform the obligations agreed upon.

"Defense" as used in this Law means refusal by a person liable for a negotiable instrument to perform his obligations to the creditor in accordance with the provisions of this Law.

Article 14 Particulars recorded on a negotiable instrument shall be truthful and shall not be forged or altered. Whoever forges or alters the signature or other particulars recorded on an instrument shall bear legal responsibility.

A forged or altered signature on a negotiable instrument shall not affect the effect of other true signatures thereon.

Where other particulars recorded on a negotiable instrument have been altered, a signer thereto before the alteration is made shall be liable for the particulars originally recorded, a signer thereto after the alteration is made shall be liable for the altered particulars. Where it is hard to tell whether a signature is put before or after the alteration, it shall be deemed as one put before the alteration.

Article 15 In the event a negotiable instrument is lost, the person losing it may promptly notify the drawee of the loss for the latter to stop payment thereof, unless no drawee is recorded on the instrument or it is hard to identify the drawee or his agent.

The drawee who receives notice to stop payment of the lost instrument shall suspend its payment.

The person who loses the instrument shall, within three days after serving the stop-payment notice or after losing the instrument, apply to a People's Court according to law for making this exigency known to the public or bring an action in a People's Court.

Article 16 To exercise or preserve his rights on a negotiable instrument against the person who is liable for the instrument, the holder shall do it on the business premises of the party concerned and within the business hours, or at his domicile in the absence of business premises.

Article 17 The rights on a negotiable instrument lapse, unless exercised within the following time limits:

(1) two years from the date of maturity of the negotiable instrument for the holder against the drawer or acceptor; two years from the date of issue of a bill or a promissory note payable at sight for the holder against the drawer or acceptor;

(2) six months from the date of issue of a cheque for the holder against the drawer;

(3) six months from the date of non-acceptance or non-payment for the holder's right of recourse against the prior holders; or

(4) three months from the date of settlement or filing a lawsuit for the holder's right of re-recourse against the prior parties.

The date of issue and the date of maturity of a negotiable instrument shall be determined by the parties thereto according to law.

Article 18 The holder of a negotiable instrument who forfeits his rights thereon by reason of limitation of time or defects in specified particulars on the instrument still has civil rights and he is entitled to demand the drawer or acceptor to make a refund equivalent to the sum in the instrument not yet paid.

## Chapter II Bills of Exchange

### Section 1 Issue

Article 19 A bill of exchange is a negotiable instrument, signed and issued by the drawer, who authorizes the drawee to pay unconditionally a sum certain in money to the payee or the holder at sight or on a specified date.

Bills of exchange include banker's bills and commercial bills.

Article 20 “Issue” means a drawer’s signing of a bill of exchange and delivering of it to the payee.

Article 21 The drawer of a bill of exchange must maintain a bona fide relationship of entrusted payment with the drawee and have a reliable source of funds to pay the amount of sum on the bill.

No one may sign and issue bills of exchange without consideration to defraud fund from a bank or other parties to the bills.

Article 22 The following particulars shall be specified on a bill of exchange:

- (1) words expressing it to be a bill of exchange;
- (2) an unconditional order to pay;
- (3) a sum certain in money;
- (4) name of the drawee;
- (5) name of the payee;
- (6) date of issue; and
- (7) signature of the drawer.

A bill of exchange is void if any of the above-mentioned particulars is not specified thereon.

Article 23 The date of payment, place of payment and place of issue, if specified on a bill of exchange, shall be legible and unambiguous.

If the date of payment is not specified on a bill of exchange, the bill is payable at sight.

If the place of payment is not specified on a bill of exchange, the business premises, domicile or habitual residence of the drawee is the place of payment.

If the place of issue is not specified on a bill of exchange, the business premises, domicile or habitual residence of the drawer is the place of issue.

Article 24 Particulars relating to the issue of a bill of exchange other than those stipulated by this Law may be specified on a bill, however, such particulars shall have no effect on the bill.

Article 25 The date of payment may be specified in one of the following manners:

- (1) payable at sight;
- (2) payable at a fixed date;
- (3) payable at a fixed period after the date of issue; or
- (4) payable at a fixed period after sight.

The date of payment stipulated in the preceding paragraph is the date of maturity of a bill of exchange.

Article 26 A drawer who signs and issues a bill shall bear the liability for guaranteeing the acceptance and payment of the bill. In the event the bill is not accepted or paid, the drawer shall pay off the sum and expenses, as stipulated in Articles 70 and 71 of this Law, to the holder of the bill.

## Section 2 Endorsement

Article 27 A holder may transfer his rights on the bill of exchange to another person or authorize another to exercise certain part of the rights on the bill.

Where a drawer writes “non-negotiable” on a bill of exchange, the bill shall not be negotiated.

A holder shall endorse and deliver the bill of exchange when exercising the rights stipulated in the first paragraph of this Article.

“Endorsement” means the writing down of relevant particulars and signing on the back of a negotiable instrument or on an allonge.

Article 28 Where more space on a negotiable instrument is needed by the endorser for making entries, the instrument may be extended by an allonge annexed to it.

The first entry maker of the allonge shall sign on the abutting edge.

Article 29 An endorsement shall be signed and the date of endorsement specified by the endorser.

An endorsement without a specified date is deemed to be made prior to the date of maturity.

Article 30 The name of endorsee shall be specified when a bill of exchange is endorsed to negotiate or when the exercise of certain part of the rights thereon is endorsed to another.

Article 31 Where a bill of exchange is negotiated by endorsement, the endorsements shall be in succession. The holder shall prove his rights on the bill by an uninterrupted series of endorsements. A person who acquires a bill of exchange by lawful means other than endorsement shall provide evidence according to law to prove his rights thereon.

The term “uninterrupted series of endorsements” as used in the preceding paragraph means that, in the course of negotiation of an instrument, the signature of each endorser negotiating the bill and that of the immediate prior endorsee acquiring the bill shall be the same person’s.

Article 32 Where a bill of exchange is negotiated by endorsement, the subsequent party shall be liable for the authenticity of the endorsement of his immediate prior party.

A subsequent party means a person liable for an instrument who puts his signature thereto after it is signed by another.

Article 33 No condition may be attached to the endorsement. Any conditions attached to the endorsement shall have no effect of a bill.

An endorsement which transfers a part of the sum payable by the bill of exchange or separately transfers the sum payable by the bill to two or more endorsees shall be void.



Article 34 Where an endorser writes “non-negotiable” on a bill of exchange and his subsequent party negotiates it by endorsement, the endorser shall not bear responsibility for guaranty to the endorsee of the said subsequent party.

Article 35 Where in an endorsement “by procuration” is written, the endorsee is entitled to exercise the mandated rights on the bill of exchange on the endorser’s behalf. However, the endorsee may not negotiate the rights on the bill by endorsement.

A bill of exchange may be laid in pledge, provided that “value in pledge” is written in the endorsement when the bill is laid in pledge. The endorsee may exercise the rights on the bill when exercising his right of pledge according to law.

Article 36 A bill of exchange may not be negotiated by endorsement, if it is not accepted or paid or if the time limit for presentment for payment expires. The endorser shall bear liability on the bill if it is negotiated in spite of all this.

Article 37 An endorser is liable for guaranteeing the acceptance and payment of the bill of exchange held by his subsequent party after he negotiates the bill by endorsement. The endorser shall pay off the sum and expenses, as stipulated in Articles 70 and 71 of this Law, to the holder in case of non-acceptance or non-payment of the bill.

### Section 3 Acceptance

Article 38 “Acceptance” is the act of a drawee of a bill of exchange who promises to pay the sum on the bill at the maturity of the bill.

Article 39 Where a bill of exchange is drawn payable at a fixed date or at a fixed period after the date of issue, the holder shall present the bill to the drawee for acceptance before the date of maturity.

“Presentment for acceptance” is the act of a holder who presents the bill of exchange to the drawee and demands a promise of payment from the drawee.

Article 40 Where a bill of exchange is drawn payable at a fixed period after sight, the holder thereof shall present the bill to the drawee for acceptance within one month after the date of issue.

Where a bill of exchange is not presented for acceptance within the prescribed period, the holder thereof shall lose the right of recourse against his prior parties.

No presentment for acceptance is needed for a bill of exchange payable at sight.

Article 41 In respect of a bill of exchange presented for acceptance, the drawee shall accept or refuse to accept it within three days after receipt of the bill.

On receiving a bill of exchange presented for acceptance by the holder, the drawee shall write out a receipt to the holder. The receipt shall specify the date of presentment for acceptance and shall be signed.

Article 42 When accepting a bill of exchange, the drawee shall write “accepted” and the date of acceptance on the front of the bill and sign it. In the case of a bill of exchange payable at a fixed period after sight, the date of payment shall be recorded at the time of acceptance.

Where the date of acceptance is not specified on a bill of exchange, the last day of the period specified in the first paragraph of the preceding Article is the date of acceptance.

Article 43 When accepting a bill of exchange, the drawee may not attach any conditions thereto. An acceptance to which a condition is attached is deemed non-acceptance.

Article 44 After accepting a bill of exchange, the drawee shall bear the liability for paying the bill at its maturity.

#### Section 4 Guaranty

Article 45 The liability on a bill of exchange may be guaranteed by a guarantor.

The guarantor shall be any person other than the one already liable for the bill.

Article 46 A guarantor must specify the following particulars on the bill of exchange or on an allonge:

- (1) the word “guaranteed”;
- (2) the name and domicile of the guarantor;
- (3) the name of the guarantee;
- (4) date of guaranty; and
- (5) signature of the guarantor.

Article 47 Where the guarantor fails to specify Subparagraph (3) of the preceding Article on the bill of exchange or on the allonge, the acceptor is the guarantee for an accepted bill, and the drawer is the guarantee for a bill not yet accepted.

Where the guarantor fails to specify Subparagraph (4) of the preceding Article on the bill of exchange or on the allonge, the date of issue is the date of guaranty.

Article 48 No condition may be attached to a guaranty. A guaranty with conditions attached shall not affect the liability of guaranty on the bill of exchange.

Article 49 The guarantor shall be liable for guaranteeing the holder’s rights on the bill of exchange which the holder acquires lawfully, except for where the guarantee’s debt is invalid because the particulars specified on the bill are incomplete.

Article 50 Where a bill of exchange is guaranteed, the guarantor shall, together with the guarantee, undertake joint and several liability to the holder thereof. Where payment is not made at the maturity of such bill, the holder is entitled to demand payment from the guarantor and the latter shall pay the bill in full.

Article 51 Where there are two or more guarantors, they shall undertake joint and several liability.

Article 52 After the guarantor pays off the debt of the bill of exchange, the guarantor may exercise the right of recourse as enjoyed by the holder against the guarantee and his prior parties.

## Section 5 Payment

Article 53 The holder shall present the bill of exchange for payment within the following time limits:

- (1) one month after the date of issue for a bill payable at sight to be presented to the drawee; and
- (2) ten days after the date of maturity for a bill payable at fixed date, at a fixed period after the date of issue or at a fixed period after sight to be presented to the acceptor.

Where the holder fails to present the bill for payment within the prescribed period, the acceptor or drawee shall remain liable for the payment of the bill after the holder explains the situation.

Presentment for payment made to the drawee through an authorized collecting bank or at a clearing system is deemed as presentment made by the holder.

Article 54 The drawee shall pay the bill in full on the day when the holder presents the bill for payment in accordance with the provisions of the preceding article.

Article 55 The holder shall receipt the bill and surrender it to the drawee when he receives payment. Where a holder authorizes a bank to receive payment on his behalf, the bill is deemed as receipted when the authorized bank credits the collected sum to the holder's account.

Article 56 The liability of the bank authorized by the holder to receive payment shall be limited to crediting the sum on the bill to the holder's account according to the particulars specified on the bill.

The liability of the bank authorized by the drawee to make payment shall be limited to paying the sum on the bill from the drawee's account according to the particulars specified on the bill.

Article 57 When paying a bill, the drawee or his agent shall examine the uninterruptedness of the series of endorsement and the lawful identity certificate or the valid certificate of the person presenting the bill.

The drawee or his agent who makes payment out of ill intention or with gross negligence shall bear liability on his own.

Article 58 Where the drawee makes payment before the date of maturity for a bill of exchange payable at a fixed date, at a fixed period after the date of issue, or at a fixed period after sight, the drawee shall bear the liability deriving therefrom on his own.

Article 59 When the sum on a bill of exchange is expressed in a foreign currency, the sum shall be paid in Renminbi according to the market exchange rate on the day of payment.

Where the parties to a bill of exchange have agreed otherwise regarding the type of currency in payment, such agreement shall be complied with.

Article 60 After the drawee pays the bill in full according to law, all persons liable for the bill of exchange are discharged from liabilities.

#### Section 6 Right of Recourse

Article 61 Where the payment of a bill of exchange is refused at the date of maturity, the holder may exercise the right of recourse against the endorsers, the drawer and other persons liable for the bill.

Prior to the date of maturity, the holder may also exercise the right of recourse under any of the following circumstances:

- (1) the bill is dishonoured by non-acceptance;
- (2) the acceptor or the drawee has died or escaped; or
- (3) the acceptor or the drawee is declared bankrupt according to law or is ordered to stop business activities for violation of law.

Article 62 When exercising the right of recourse, the holder shall provide relevant evidence of non-acceptance or non-payment.

Where the presentment for acceptance or the presentment for payment by the holder is rejected, the acceptor or the drawee must provide proof of dishonour or a statement on reasons for dishonour. The acceptor or the drawee, who does not provide proof of dishonour or a statement on reasons for dishonour, shall bear civil liabilities deriving therefrom.

Article 63 Where the holder is unable to obtain proof of dishonour on account of the death or escape of the acceptor or the drawee or for other reasons, the holder may obtain other relevant evidence according to law.

Article 64 Where an acceptor or a drawee is declared bankrupt by a People's Court in accordance with law, the relevant judicial documents of the People's Court shall have the effect as proof of dishonor.

Where an acceptor or a drawee is ordered to stop business activities for violation of law, the decision on punishment made by a competent administrative department shall have the effect as proof of dishonour.

Article 65 A holder who is unable to present proof of dishonour, a statement on reasons for dishonour or other lawful evidence within the prescribed period of time loses the right of recourse against his prior parties. However, the acceptor or the drawee shall remain liable to the holder.

Article 66 The holder shall, within three days after receiving the relevant evidence of non-acceptance or non-payment, notify his prior parties in writing of the fact of dishonour; the said prior parties shall, within three days after receiving the notice, notify his prior parties about the

matter. Or, the holder may simultaneously notify in writing all persons liable for the bill of exchange.

In case of failure to do what is stipulated in the preceding paragraph, the holder may still exercise the right of recourse. Where losses are caused to the prior parties or the drawee by delayed notice, the party to the bill of exchange failing to notify the relevant parties within the prescribed time limit shall be liable for compensation of the losses, but the damages shall be limited to the sum payable by the bill.

If a notice is mailed to a legal address or to an address agreed upon within the prescribed period of time, the notice is deemed to have been dispatched.

Article 67 In the written notice made according to the first paragraph of the preceding article the main particulars specified on the bill of exchange shall be recorded and the fact that the said bill has been returned shall clearly be stated.

Article 68 The drawer, endorser, acceptor and guarantor of a bill of exchange are jointly and severally liable to the holder.

The holder may exercise the right of recourse against any or several or all of the persons liable for the bill of exchange in disregard of the order of precedence.

The holder, who has exercised the right of recourse against one or several of the persons liable for the bill of exchange, may still exercise the right of recourse against other persons liable for the bill. After clearing off the liabilities, the person against whom the right of recourse is exercised has the same right as the holder thereof.

Article 69 Where the holder is the drawer, he has no right of recourse against the prior parties. Where the holder is an endorser, he has no right of recourse against the subsequent parties.

Article 70 When exercising the right of recourse, the holder may demand the person against whom the right of recourse is exercised to pay the following sum and expenses:

- (1) the sum payable by the bill of exchange dishonoured;
- (2) interest, calculated at the rate prescribed by the People's Bank of China, on the sum payable by the bill of exchange, from the date of maturity or from the date of presentment for payment to the date of payment; and
- (3) the expenses for obtaining relevant evidence of dishonour and for dispatching notices.

When the person against whom the right of recourse is exercised settles the liabilities, the holder shall surrender the bill of exchange together with the relevant evidence of dishonour and issue a receipt of interest and expenses paid.

Article 71 When the person against whom the right of recourse is exercised has settled the debt in accordance with the provisions of the preceding article, he may exercise the right of re-recourse against other persons liable for the bill of exchange and request them to pay the following sum and expenses:

- (1) the entire sum he has paid;
- (2) interest, calculated at the rate prescribed by the People's Bank of China, on the said sum from the day when he made the payment to the day when the said sum is reimbursed after seeking re-recourse; and
- (3) the expenses for the dispatch of notices.

When the person who exercises the right of re-recourse is reimbursed, he shall surrender the bill of exchange and relevant evidence of dishonor and issue a receipt of interest and expenses paid.

Article 72 When the person against whom the right of recourse is exercised has settled the debt according to the provisions of the preceding two articles, he shall be discharged from liabilities.

### Chapter III Promissory Notes

Article 73 A promissory note is a negotiable instrument signed and issued by the maker promising to pay unconditionally the payee or bearer a sum certain in money at sight.

A promissory note as used in this Law means a banker's note.

Article 74 The maker of a promissory note shall possess a reliable source of funds to pay the sum of the note and guarantee its payment.

Article 75 The following particulars shall be specified on a promissory note:

- (1) words expressing it to be a promissory note;
- (2) a promise of unconditional payment;
- (3) a sum certain in money;
- (4) the business or personal name of the payee;
- (5) the date of issue; and
- (6) the signature of the maker.

A promissory note is invalid if any of the particulars mentioned in the preceding paragraph is not specified thereon.

Article 76 Particulars such as the place of payment and the place of issue specified on a promissory note shall be legible and unambiguous.

Where the place of payment is not specified on a promissory note, the business premises of the maker is the place of payment.

Where the place of issue is not specified on a promissory note, the business premises of the maker is the place of issue.

Article 77 The maker of a promissory note shall bear the liability for payment when the bearer presents the note for visa.

Article 78 The time limit for the payment of a promissory note shall not exceed two months from the date of issue.

Article 79 The bearer of a promissory note loses the right of recourse against his prior parties other than the maker, if he fails to present the note for visa within the prescribed period of time.

Article 80 In addition to the provisions of this Chapter, the provisions of Chapter II of this Law regarding bills of exchange shall be applicable to endorsement, guaranty, payment and the exercise of the right of recourse in respect of promissory notes.

In addition to the provisions of this Chapter, the provisions of Article 24 of this Law regarding bills of exchange shall be applicable to issue of promissory notes.

#### Chapter IV Cheques

Article 81 A cheque is a negotiable instrument that is signed and issued by the drawer, who authorizes the bank or other financial institution handling check deposit to pay unconditionally a sum certain in money to the payee or the bearer at sight.

Article 82 When opening a cheque account, the applicant must use the true personal or business name and submit legitimate document to prove the identity.

When opening a cheque account and asking for cheque books, the applicant shall have reliable financial credibility and deposit a certain amount of money.

When opening a cheque account, the applicant shall reserve a specimen of the signature of his true name and the seal.

Article 83 A cheque may be cashed or transferred into another's account. If a cheque is transferred to another's account, this should be clearly indicated on the face of the cheque.

A form of cash cheque may be specially designed and made to be paid only in cash and a cash cheque can only be cashed.

A form of transfer cheque may be designed and made for cheques used to transfer account. A transfer cheque can only be transferred to another's account, and shall not be paid in cash.

Article 84 The following particulars shall be specified on a cheque:

(1) the word expressing it to be a cheque;

- (2) an order of unconditional payment;
- (3) a sum certain in money;
- (4) name of the drawee;
- (5) the date of issue; and
- (6) the signature of the drawer.

A cheque is null and void if any one of the particulars mentioned in the preceding paragraph is not specified thereon.

Article 85 A cheque in which the sum is missing may be completed by the drawer's mandate. Such a cheque shall not be used before its completion.

Article 86 A cheque in which the name of the payee is missing may be completed by the drawer's mandate.

In case the place of payment is missing in a cheque, the business premises of the drawee is the place of payment.

In case the place of issue is missing in a cheque, the business premises, domicile or habitual residence of the drawer is the place of issue.

A drawer may specify himself on a cheque as the payee.

Article 87 The sum specified on a cheque signed and issued by the drawer shall not exceed the actual balance of the drawer's deposit in the paying bank at the time of payment.

Where the sum specified on a cheque signed and issued by the drawer exceeds the actual balance of the drawer's deposit in the paying bank at the time of payment, the cheque is a rubber cheque. The issue of a rubber cheque is prohibited.

Article 88 A drawer may not sign and issue a cheque for which the signature or seal is not in consistency with the reserved specimen of signature or seal.

Article 89 A drawer shall bear the liability for guaranteeing payment to a bearer the sum specified on the cheque signed and issued.

Where the balance of the drawer's deposit in the paying bank is sufficient to pay the sum of the cheque, the drawee shall pay the cheque in full on the day of presentment.

Article 90 A cheque is payable at sight and the date of payment may not be specified. A date of payment put on a cheque is invalid.

Article 91 A bearer shall present the cheque for payment within 10 days from the date of issue. The time limit for presentment for payment of a cheque used in a place other than the place of issue shall be prescribed separately by the People's Bank of China.



After the expiration of the time limit prescribed for presentment for payment of a cheque, the drawee may choose not to pay the cheque. Where the cheque is dishonored, the drawer shall still bear the liability for the instrument to the bearer.

Article 92 The drawee who has paid the sum of the cheque according to law shall no longer bear the liability as an authorized payer to the drawer or the liability for payment to the holder, except that the drawee made the payment out of ill intention or with gross negligence.

Article 93 In addition to the provisions of this Chapter, the provisions of Chapter II of this Law regarding bills of exchange shall be applicable to endorsement, payment and the exercise of the right of recourse with regard to cheques.

In addition to the provisions of this Chapter, the provisions of Articles 24 and 26 of this Law shall be applicable to issue of cheques.

## Chapter V Application of Law to Negotiable Instruments Involving Foreign Elements

Article 94 The application of law to negotiable instruments involving foreign elements is determined according to the provisions of this Chapter.

Negotiable instruments involving foreign elements as mentioned in the preceding paragraph refer to the instruments that are issued, or endorsed, or accepted, or guaranteed, or paid either within or outside, the territory of the People's Republic of China.

Article 95 If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those of this Law, the provisions of the international treaty shall apply; however, provisions on which the People's Republic of China has announced reservations shall be excepted.

International practices may be applied to matters for which no provisions are contained in this Law or in any international treaty concluded or acceded to by the People's Republic of China.

Article 96 As regards the capacity for civil conduct of a person liable for a negotiable instrument, the law of his own country shall apply.

Where a person liable for a negotiable instrument is regarded as one having civil disability or limited civil ability according to the law of his own country, but as one having full civil ability according to the law of the place of his conduct, the law of the place of his conduct shall apply.

Article 97 As regards the particular concerning the date for the issue of bills of exchange or promissory notes, the law of the place of issue shall apply.

As regards the particular concerning the date for the issue of cheques, the law of the place of issue shall apply. However, the law of the place of payment may apply with the agreement of the parties to a cheque.

Article 98 As regards the endorsement, acceptance, payment or guaranty in relation to negotiable instruments, the law of the place where it takes place shall apply.

Article 99 As regards the limitation of time for the exercise of the right of recourse, the law of the place of issue shall apply.

Article 100 As regards the limitation of time for the presentment of instrument, manner of proof of dishonour and the limitation of time for issue of proof of dishonour, the law of the place of payment shall apply.

Article 101 In the case of loss of a negotiable instrument, the law of the place of payment shall apply to the procedure for application by the person who lost the instrument for preservation of rights on the instrument.

## Chapter VI Legal Responsibility

Article 102 Whoever commits any of the following acts of fraud in relation to negotiable instruments shall be investigated for criminal responsibility according to law:

- (1) forgery or alteration of instruments;
- (2) intentional use of forged or altered instruments;
- (3) in order to defraud money or property, signing and issuing rubber cheques or intentionally signing and issuing cheques whereon the signature or seal is not in consistency with the reserved specimen of signature or seal;
- (4) signing and issuing bills of exchange or promissory notes without a reliable source of funds to defraud money;
- (5) in the capacity of a drawer, falsely specifying the particulars on a bill of exchange or promissory note at the time of issue to defraud money or property;
- (6) fraudulently using another's instrument or intentionally using an overdue or canceled instrument to defraud money or property; or
- (7) in the capacity of a drawee, committing any of the acts mentioned in the preceding six subparagraphs through ill-intentioned collusion with the drawer and/or holder.

Article 103 Whoever commits an act mentioned in the preceding paragraph, if the case is minor and does not constitute a crime, shall be given administrative punishment in accordance with relevant State regulations.

Article 104 Any staff member of a financial institution who, through neglect of his duty, accepts, pays or guarantees a negotiable instrument which is at variance with the provisions of this Law,

shall be given administrative sanction; if his act causes heavy losses and thus constitutes a crime, he shall be investigated for criminal responsibility according to law.

If losses are caused to the parties to the instrument as a result of the above-mentioned act committed by a staff member of a financial institution, the said institution and the person who is directly responsible shall be liable for the losses according to law.

Article 105 If a drawee intentionally delays paying an instrument payable at sight or a matured instrument, the financial administrative department shall mete out a fine to the drawee and give administrative sanction to the person who is directly responsible.

If losses are caused to the holder due to the intentionally delayed payment, the drawee shall be liable for the losses according to law.

Article 106 Whoever commits an act in violation of the provisions of this Law, except acts for which the doer shall be liable for losses under this Law, and causes losses to others shall bear civil liability according to law.

## Chapter VII Supplementary Provisions

Article 107 As regards the calculation of all the time limits stipulated by this Law, the relevant provisions of the General Principles of the Civil Law on limitation of time shall apply.

When limitation of time is prescribed in months, it expires on the corresponding day of the month when the instrument matures. If there is no corresponding day, the time limit expires on the last day of the said month.

Article 108 The forms of bills of exchange, promissory notes and cheques shall be unified.

The forms and measures for the administration of printing of negotiable instruments and relevant documents shall be prescribed by the People's Bank of China.

Article 109 The People's Bank of China shall, in accordance with this Law, formulate specific measures for the administration of negotiable instruments, which shall go into effect after being approved by the State Council.

Article 110 This Law shall go into effect as of January 1, 1996.

## **Marriage Law of the People's Republic of China**

Adopted at the Third Session of the Fifth National People's Congress on September 10, 1980 and promulgated by Order No.9 of the Chairman of the Standing Committee of the National People's Congress on September 10, 1980; and amended in accordance with the Decision on Amending the Marriage Law of the People's Republic of China, adopted at the 21st Meeting of the Standing Committee of the Ninth National People's Congress on April 28, 2001

### Contents

Chapter I General Provisions

Chapter II Marriage Contract

Chapter III Family Relations

Chapter IV Divorce

Chapter V Salvage Measures and Legal Liabilities

Chapter VI Supplementary Provisions

### Chapter I General Provisions

Article 1 This Law is the fundamental code governing marriage and family relations.

Article 2 A marriage system based on the free choice of partners, on monogamy and on equality between man and woman shall be applied.

The lawful rights and interests of women, children and old people shall be protected.

Family planning shall be practised.

Article 3 Marriage upon arbitrary decision by any third party, mercenary marriage and any other acts of interference in the freedom of marriage shall be prohibited. The exaction of money or gifts in connection with marriage shall be prohibited.

Bigamy shall be prohibited. Anyone who has a spouse shall be prohibited to cohabit with another person of the opposite sex. Family violence shall be prohibited. Maltreatment and desertion of one family member by another shall be prohibited.

Article 4 Husband and wife shall be loyal to each other and respect each other; family members shall respect the old and cherish the young, help each other, and maintain the marriage and family relationship characterized by equality, harmony and civility.

## Chapter II Marriage Contract

Article 5 Marriage must be based upon the complete willingness of both man and woman. Neither party may use compulsion on the other party, and no third party may interfere.

Article 6 No marriage may be contracted before the man has reached 22 years of age and the woman 20 years of age. Late marriage and late childbirth shall be encouraged.

Article 7 No marriage may be contracted under any of the following circumstances:

- (1) if the man and the woman are lineal relatives by blood, or collateral relatives by blood up to the third degree of kinship; or
- (2) if the man or the woman is suffering from any disease which is regarded by medical science as rendering a person unfit for marriage.

Article 8 Both the man and the woman desiring to contract a marriage shall register in person with the marriage registration office. If the proposed marriage is found to conform with the provisions of this Law, the couple shall be allowed to register and issued marriage certificates. The husband-and-wife relationship shall be established as soon as they obtain the marriage certificates. A couple shall go through marriage registration if it has not done so.

Article 9 After a marriage has been registered, the woman may become a member of the man's family or vice versa, depending on the agreed wishes of the two parties.

Article 10 the marriage shall be invalid if:

- (1) either of the married parties commits bigamy;
- (2) there is the prohibited degree of kinship between the married parties;
- (3) before marriage either of the parties is suffering from a disease which is regarded by medical science as rendering a person unfit for marriage and which has not yet been cured after marriage; or
- (4) one of the married parties has not reached the statutory age for marriage.

Article 11 where marriage is contracted by coercion, the coerced party may appeal to the marriage registration office or the People's Court for annulment of such marriage. Such an appeal for annulment of marriage made by the coerced party shall be submitted within one year from the date of marriage registration. Where the party concerned whose personal freedom is illegally restrained, such an appeal for annulment of marriage shall be submitted within one year from the date of the restoration of the personal freedom.

Article 12 Any marriage that is invalidated or annulled is null and void from the very beginning. The parties concerned are devoid of any rights or duties of a husband and a wife. The property acquired by them during the period of their cohabitation shall be disposed of by agreement

between the parties; if they fail to reach an agreement, the People's Court shall make a judgment on the principle of giving consideration to the unerring party. Where property is to be disposed of because marriage is invalidated as a result of bigamy, the rights and interests in respect of the property enjoyed by the party under lawful contract of marriage may not be encroached on. With regard to the children born by the party concerned, the provisions of this Law on parents and children shall apply.

### Chapter III Family Relations

Article 13 Husband and wife shall have equal status in the family.

Article 14 Both husband and wife shall have the right to use his or her own surname and given name.

Article 15 Both husband and wife shall have the freedom to engage in production and other work, to study and to participate in social activities; neither party shall restrict or interfere with the other party.

Article 16 Both husband and wife shall have the duty to practise family planning.

Article 17 The following property acquired by the husband and the wife during the period in which they are under contract of marriage shall be in their joint possession:

- (1) wages and bonuses;
- (2) proceeds of production and business operation;
- (3) incomes of intellectual property rights;
- (4) property acquired from inheritance or presentation, with the exception of such property as stipulated by the provisions of the third item of Article 18 of this Law; and
- (5) other property which should be in their joint possession.

Husband and wife shall enjoy equal rights in the disposition of their jointly possessed property.

Article 18 The property in the following cases shall belong to one party of the couple:

- (1) the property that belongs to one party before marriage;
- (2) payments for medical expenses received by one party who suffers physical injury, subsidies for living expenses granted to the disabled subsidies, etc.;
- (3) the property to be in the possession of one party as determined by will or by an agreement on gift;
- (4) articles for daily use specially used by one party; and

(5) other property which should be in the possession of one party.

Article 19 The husband and the wife may conclude an agreement that the property acquired by them during the period in which they are under contract of marriage and the property acquired before marriage shall be in their respective possession separately or jointly or part of the property shall be in their possession separately and the other part jointly. Such an agreement shall be in written form. Where such an agreement is lacking, or the provisions in the agreement are not clear, the provisions of Articles 17 and 18 of this Law shall apply.

The agreement concluded by the husband and the wife with regard to the property acquired during the period in which they are under contract of marriage and the property acquired before marriage shall be binding on both parties.

Where the husband and the wife agree that the property acquired by them during the period in which they are under contract of marriage shall be in their possession separately, debts contracted by the husband or the wife shall be paid off with the property in the possession of the party of the husband or the wife, if the third person knows that there is such an agreement.

Article 20 Husband and wife shall have the duty to maintain each other.

If one party fails to perform this duty, the party in need of maintenance shall have the right to demand maintenance payments from the other party.

Article 21 Parents shall have the duty to bring up and educate their children; children shall have the duty to support and assist their parents.

If parents fail to perform their duty, children who are minors or are not capable of living on their own shall have the right to demand the costs of upbringing from their parents.

If children fail to perform their duty, parents who are unable to work or have difficulty in providing for themselves shall have the right to demand support payments from their children.

Infanticide by drowning, abandonment of infants and all other acts causing serious harm to infants shall be prohibited.

Article 22 Children may adopt either their father's or their mother's surname.

Article 23 Parents shall have the right and duty to protect and educate their children who are minors. If children who are minors cause damage to the State, the collective or individuals, their parents shall have the duty to bear civil liability.

Article 24 Husband and wife shall have the right to inherit each other's property.

Parents and children shall have the right to inherit each other's property.

Article 25 Children born out of wedlock shall enjoy the same rights as children born in wedlock. No one may harm or discriminate against them.

The natural father or mother who does not directly bring up a child born out of wedlock shall bear the child's living and educational expenses until the child can live on his or her own.

Article 26 The State shall protect lawful adoption. The relevant provisions of this Law governing the relationship between parents and children shall apply to the rights and duties in the relationship between foster-parents and foster-children.

The rights and duties in the relationship between a foster-child and his natural parents shall terminate with the establishment of his adoption.

Article 27 Maltreatment and discrimination shall not be allowed between step-parents and step-children.

The relevant provisions of this Law governing the relationship between parents and children shall apply to the rights and duties in the relationship between step-fathers or step-mothers and their step-children who receive care and education from them.

Article 28 Grandparents and maternal grandparents who can afford it shall have the duty to bring up their grandchildren and maternal grandchildren who are minors and whose parents are dead or have no means to bring them up. Grandchildren and maternal grandchildren who can afford it shall have the duty to support their grandparents and maternal grandparents whose children are dead or have no means to support them.

Article 29 Elder brothers and elder sisters who can afford it shall have the duty to maintain their younger brothers and sisters who are minors, if their parents are dead or have no means to bring them up. Younger brothers or sisters who are brought up by their elder brothers or sisters and can afford it shall have the duty to maintain their elder brothers or sisters who lack not only the ability to work but also source of income.

Article 30 Children shall respect their parents' right of marriage, they are not allowed to interfere in the re-marriage of their parents or their life after re-marriage. The duty of the children for supporting their parents shall come not to an end with the change in the marriage contract of their parents.

#### Chapter IV Divorce

Article 31 Divorce shall be granted if husband and wife both desire it. Both parties shall apply to the marriage registration office for divorce. The marriage registration office, after clearly establishing that divorce is desired by both parties and that appropriate arrangements have been made for the care of any children and the disposition of property, shall issue the divorce certificates.

Article 32 If one party alone desires a divorce, the organization concerned may carry out mediation or the party may appeal directly to a People's Court to start divorce proceedings.

In dealing with a divorce case, the People's Court shall carry out mediation; divorce shall be granted if mediation fails because mutual affection no longer exists.



In one of the following cases, divorce shall be granted if mediation fails:

- (1) where one party commits bigamy or cohabits with another person of the opposite sex;
- (2) where one party indulges in family violence or maltreats or abandons family members ;
- (3) where one party indulges in the gambling, drug taking, etc. and refuses to reform after repeated persuasion;
- (4) where both parties have separated from each other for two full years for lack of mutual affection;
- (5) other cases which lead to the shattering of affection between husband and wife.

Where one party is declared to be missing and the other party starts divorce proceedings, divorce shall be granted.

Article 33 If the spouse of a soldier in active service desires a divorce, the matter shall be subject to the soldier's consent, unless the soldier has made grave errors.

Article 34 A husband may not apply for a divorce when his wife is pregnant, or within one year after the birth of the child, or within six months after the termination of her gestation. This restriction shall not apply in cases where the wife applies for a divorce, or where the People's Court deems it necessary to accept the divorce application made by the husband.

Article 35 If, after divorce, both parties desire to resume their husband-and-wife relationship, they shall apply for registration of remarriage with the marriage registration office.

Article 36 The relationship between parents and children shall not come to an end with the parents' divorce. After divorce, whether the children are directly put in the custody of the father or the mother, they shall remain the children of both parents.

After divorce, both parents shall still have the right and duty to bring up and educate their children.

In principle, the mother shall have the custody of a breast-fed infant after divorce. If a dispute arises between the two parents over the custody of their child who has been weaned and they fail to reach an agreement, the People's Court shall make a judgment in accordance with the rights and interests of the child and the actual conditions of both parents.

Article 37 If, after divorce, one parent has been given custody of a child, the other parent shall bear part or the whole of the child's necessary living and educational expenses. The two parents shall seek agreement regarding the amount and duration of such payment. If they fail to reach an agreement, the People's Court shall make a judgment.

The agreement or court judgment on the payment of a child's living and educational expenses shall not prevent the child from making a reasonable request, when necessary, to either parent for an amount exceeding what is decided upon in the said agreement or judgment.

Article 38 After divorce, the father or the mother who does not directly bring up the child shall have the right to visit his or her child, and the other party shall have the duty to cooperate.

The manner and time for exercising the right to visit a child shall be decided by the parties through consultation; if they fail to reach an agreement upon in this regard, the People's Court shall make a judgment .

Where the visit to a child paid by the father or the mother is not conducive to the physical and mental health of the child, the People's Court shall terminate the right to visit; after the cause of such termination disappears, the right to pay visit to the child shall be resumed.

Article 39 At the time of divorce, the husband and the wife shall seek agreement regarding the disposition of their jointly possessed property. If they fail to reach an agreement, the People's Court shall, on the basis of the actual circumstances of the property and on the principle of taking into consideration the rights and interests of the child and the wife, make a judgment.

The rights and interests enjoyed by the husband or the wife in contracting land management on a household basis shall be protected in accordance with law.

Article 40 Where the husband and the wife agree in writing that the property acquired by them during the period in which they are under contract of marriage is in their separate possession, if one party has performed more duties in respect of bringing up the child, taking care of the old and assisting the other party in work, it shall, at the time of divorce, have the right to request the other party to make compensation for the above, and the other party shall do so accordingly.

Article 41 At the time of divorce, debts incurred jointly by the husband and the wife during their married life shall be paid off jointly by them. Where their jointly possessed property is insufficient to pay the debts, or the property is in their separate possession, the two parties shall discuss alternative ways of payment; if they fail to reach an agreement, the People's Court shall make a judgment.

Article 42 If, at the time of divorce, one party has difficulty in supporting himself or herself, the other party shall render appropriate assistance with his or her own property such as his or her residential house. Specific arrangements shall be made by both parties through consultation. If they fail to reach an agreement, the People's Court shall make a judgment.

## Chapter V Salvage Measures and Legal Liabilities

Article 43 Where a person indulges in family violence or maltreats a family member, the victim shall have the right to advance a request; the neighborhood committee, villagers committee or the unit where they belong to, shall persuade the person to stop doing it and conduct mediation.

Where a person is committing family violence, the victim shall have the right to advance a request; the neighborhood committee or the villagers committee shall persuade the person to stop doing it; the public security organ shall stop such violence.

Where the victim advances a request, the public security organ shall, in accordance with the legal provisions on administrative penalties for public security, impose an administrative penalty on the person who commits family violence or maltreatment of a family member.

Article 44 The family member who is abandoned shall have the right to advance a request and the neighborhood committee, villagers committee or the unit where they belong to, shall persuade the person to stop doing it and conduct mediation.

Where the abandoned family member advances a request, the People's Court shall, in accordance with law, make the judgment on payment by the person who abandons the family member to the victim for the costs of maintenance, upbringing or support.

Article 45 The person who commits bigamy, family violence, maltreatment or abandonment of a family member, if it constitutes a crime, shall be investigated for criminal responsibility in accordance with law. The victim may, in accordance with relevant provisions of the Criminal Procedure Law, lodge a private prosecution with the People's Court; the public security organ shall investigate the case in accordance with law, and the People's Procuratorate shall institute public prosecution in accordance with law.

Article 46 Where one of the following circumstances leads to divorce, the unerring party shall have the right to claim compensation:

- (1) bigamy is committed;
- (2) one party who has a spouse cohabits with another person of the opposite sex;
- (3) family violence is committed; or
- (4) a family member is maltreated or abandoned.

Article 47 If, at the time of divorce, one party conceals, transfers, sells off or destroys the property in the joint possession of the couple, or forge debts in an attempt to encroach upon the property of the other party, the former may get less or no property when the property in the joint possession of the couple is partitioned. After divorce, if the other party discovers the above, it may bring a suit in the People's Court to demand re-partition of the property in the joint possession of the couple.

With respect to acts that hinder civil procedures as mentioned in the preceding paragraph, the People's Court shall mete out sanctions in accordance with the provisions of the Civil Procedure Law.

Article 48 Where a person refuses to abide by the judgment or ruling on the costs of maintenance, upbringing or support payments, or on the partitioning or inheritance of property, or visit to a child, the People's Court shall enforce the execution of the judgment or ruling in accordance with law. The individuals and unit concerned shall have the duty to assist such execution.

Article 49 Where there are other provisions by other laws on illegal acts against marriage or family and on legal liabilities for the acts, such provisions shall apply.

## Chapter VI Supplementary Provisions

Article 50 The people's congresses of national autonomous areas shall have the power to formulate adaptations in the light of the specific conditions of the local nationalities in regard to marriage and family. Adaptations formulated by autonomous prefectures and autonomous counties shall go into effect only after approval by the standing committee of the people's congress of the relevant province, autonomous region, or municipality directly under the Central Government. Adaptations formulated by autonomous regions shall go into effect only after approval by the Standing Committee of the National People's Congress.

Article 51 This Law shall go into effect as of January 1, 1981.

The Marriage Law of the People's Republic of China promulgated on May 1, 1950 shall be invalidated as of the date when this Law goes into effect.

## **Adoption Law of the People's Republic of China**

Adopted at the 23rd Meeting of the Standing Committee of the Seventh National People's Congress and promulgated by Order No. 54 of the President of the People's Republic of China on December 29, 1991, amended in accordance with the Decision on Revising the Adoption Law of the People's Republic of China adopted at the 5th Meeting of the Standing Committee of the Ninth National People's Congress on November 4, 1998

### Contents

#### Chapter I General Provisions

#### Chapter II Establishment of an Adoptive Relationship

#### Chapter III Validity of Adoption

#### Chapter IV Termination of an Adoptive Relationship

#### Chapter V Legal Responsibility

#### Chapter VI Supplementary Provisions

#### Chapter I General Provisions

Article 1 This Law is enacted to protect the lawful adoptive relationship and to safeguard the rights of parties involved in the adoptive relationship.

Article 2 Adoption shall be in the interest of the upbringing and growth of adopted minors, with the lawful rights and interests of both adoptees and adopters safeguarded, in adherence to the principles of equality and voluntariness, and not in contravention of social morality.

Article 3 Adoption shall not contravene laws and regulations on family planning.

#### Chapter II Establishment of an Adoptive Relationship

Article 4 Minors under the age of 14, as enumerated below, may be adopted:

- (1) orphans bereaved of parents;
- (2) abandoned infants or children whose parents cannot be ascertained or found; and

(3) children whose parents are unable to rear them due to unusual difficulties.

Article 5 The following citizens or institutions shall be entitled to place out children for adoption:

(1) guardians of an orphan;

(2) social welfare institutions; and

(3) parents unable to rear their children due to unusual difficulties.

Article 6 Adopters shall meet simultaneously the following requirements:

(1) childless;

(2) capable of rearing and educating the adoptee;

(3) suffering no such disease as is medically regarded as unfit for adopting a child; and

(4) having reached the age of 30.

Article 7 A person may adopt a child belonging to a collateral relative by blood of the same generation and up to the third degree of kinship, irrespective of the restrictions specified in sub-paragraph (3) of Article 4; sub-paragraph (3) of Article 5 and Article 9 of this Law as well as the restriction that the adoptee shall be under the age of 14.

An overseas Chinese, in adopting a child belonging to a collateral relative by blood of the same generation and up to the third degree of kinship, may even be not subject to the adopter's childless status.

Article 8 The adopter may adopt one child only, male or female.

Orphans, disabled children, or abandoned infants and children whose parents cannot be ascertained or found and who are under the care of a social welfare institution may be adopted irrespective of the restrictions that the adopter shall be childless and that he or she may adopt one child only.

Article 9 Where a male person without spouse adopts a female child, the age difference between the adopter and the adoptee shall be no less than 40 years.

Article 10 Where the parents intend to place out their child for adoption, they shall act in concert. If one parent cannot be ascertained or found, the other parent may place out the child for adoption alone.

Where a person with spouse adopts a child, the husband and wife shall adopt the child in concert.

Article 11 Adoption of a child and the placing out of the child for the adoption shall both take place on a voluntary basis. Where the adoption involves a minor aged 10 or more, the consent of the adoptee shall be obtained.

Article 12 If the parents of a minor are both persons without full civil capacity, the guardian(s) of the minor may not place out him (her) for adoption, except when the parents may do serious harm to the minor.

Article 13 Where a guardian intends to place out an orphaned minor for adoption, the guardian shall obtain the consent of the person who has obligations to support the orphan. Where the person who has obligations to support the orphan disagrees to place out the orphan for adoption, and the guardian is unwilling to continue the performance of his guardianship, it is necessary to change the guardian in accordance with the General Principles of the Civil Law of the People's Republic of China.

Article 14 The husband or wife may, with the consent of the father or mother of a child, adopt the child as his or her step-son or step-daughter, and may be subject to no restrictions specified in sub-paragraph (3) of Article 4; sub-paragraph (3) of Article 5 and Article 6 of this Law, nor the restrictions that the adoptee shall be under the age of 14 and that only one child may be adopted.

Article 15 The adoption shall be registered with the civil affairs department of the people's government at or above the county level. The adoptive relationship shall be established as of the date of registration.

Where an abandoned infant or child whose parents cannot be ascertained or found is adopted, the civil affairs department in charge of registration shall make it known to the general public before registration.

If the parties involved in the adoptive relationship wish to enter into an agreement on adoption, they may conclude such an agreement.

If the parties or one party involved in the adoptive relationship wishes that the adoption be notarized, it shall be done accordingly.

Article 16 After the adoptive relationship is established, the public security organ shall, in accordance with the relevant regulations of the State, register the adoptee's residence.

Article 17 Orphans or children whose parents are unable to rear them may be supported by relatives or friends of their parents.

The adoptive relationship shall not apply to the relationship between the supporter and the supported.

Article 18 Where a spouse places out a minor child for adoption after the death of the other spouse, the parents of the deceased shall have the priority in rearing the child.

Article 19 Persons having placed out a child for adoption may not bear any more child, in violation of the regulations on family planning, on the ground of having placed out their child for adoption.

Article 20 It is strictly forbidden to buy or sell a child or to do so under the cloak of adoption.

Article 21 A foreigner may, in accordance with this Law, adopt a child (male or female) in the People's Republic of China.

Where a foreigner wishes to adopt a child in the People's Republic of China, the matter shall be subject to examination and approval of the competent authorities of the country, to which he or she belongs, in accordance with the law of that country. The adopter shall provide papers certifying such particulars of the adopter as age, marital status, profession, property, health and whether ever subjected to criminal punishment, which are issued by the competent agencies of the country to which the adopter belongs. Such certifying papers shall be authenticated by a foreign affairs institution of the country to which the adopter belongs or by an agency authorized by the said institution, and by the embassy or consulate of the People's Republic of China stationed in that country, too. The adopter shall conclude a written agreement with the person who places out the child for adoption and register in person the adoption with a civil affairs department of the people's government at the provincial level.

If the parties or one party involved in the adoptive relationship wishes that the adoption be notarized, it shall be done with a notary agency that is qualified to handle foreign-related notarization and is designated by the administrative department of justice under the State Council.

Article 22 When the adopter and the person placing out the child for adoption wish to make a secret of the adoption, others shall respect their wish and shall not make a disclosure thereof.

### Chapter III Validity of Adoption

Article 23 As of the date of establishment of the adoptive relationship, the legal provisions governing the relationship between parents and children shall apply to the rights and duties in the relationship between adoptive parents and adopted children; the legal provisions governing the relationship between children and close relatives of their parents shall apply to the rights and duties in the relationship between adopted children and close relatives of the adoptive parents. The rights and duties in the relationship between an adopted child and his or her parents and other close relatives shall terminate with the establishment of the adoptive relationship.

Article 24 An adopted child may adopt his or her adoptive father's or adoptive mother's surname, and may also retain his or her original surname, if so agreed through consultation between the parties concerned.

Article 25 Any act of adoption contravening the provisions of Article 55 of the General Principles of the Civil Law of the People's Republic of China and those of this Law shall be of no legal validity.

Any act of adoption ruled to be invalid by a people's court shall be of no legal validity from the very start of the act.

### Chapter IV Termination of an Adoptive Relationship



Article 26 No adopter may terminate the adoptive relationship before the adoptee comes of age, except when the adopter and the person having placed out the child for the adoption agree to terminate such relationship. If the adopted child involved reaches the age of 10 or more, his or her consent shall be obtained.

Where an adopter fails to perform the duty of rearing the adoptee or commits maltreatment, abandonment, or other acts of encroachment upon the lawful rights of the minor adopted child, the person having placed out the child for adoption shall have the right to demand termination of the adoptive relationship. Where the adopter and the person having placed out the child for adoption fail to reach an agreement thereon, a suit may be brought in a People's Court.

Article 27 Where the relationship between the adoptive parents and an adult adopted child deteriorates to such a degree that their living together in a same household becomes impossible, they may terminate their adoptive relationship by agreement. In the absence of an agreement, they may bring a suit in a People's Court.

Article 28 Where the parties agree to terminate the adoptive relationship, they shall register the termination of the adoptive relationship with a civil affairs department.

Article 29 Upon termination of an adoptive relationship, the rights and duties in the relationship between an adopted child and his or her adoptive parents and their close relatives shall also terminate, and the rights and duties in the relationship between the child and his or her parents and their close relatives shall be restored automatically. However, with respect to the rights and duties in the relationship between an adult adopted child and his or her parents and their close relatives, it may be decided through consultation as to whether to restore them.

Article 30 Upon termination of an adoptive relationship, an adult adopted child who has been reared by the adoptive parents shall provide an amount of money to support the adoptive parents who have lost ability to work and are short of any source of income. If the adoptive relationship is terminated on account of the maltreatment or desertion of the adoptive parents by the grown-up adopted child, the adoptive parents may demand a compensation from the adopted child for the living and education expenses paid during the period of adoption.

If the parents of an adopted child request the termination of the adoptive relationship, the adoptive parents may demand an appropriate compensation from the parents for the living and education expenses paid during the period of adoption, except if the adoptive relationship is terminated on account of the maltreatment or desertion of the adopted child by the adoptive parents.

## Chapter V Legal Responsibility

Article 31 Whoever abducts and traffics in a child under the cloak of adoption shall be investigated for criminal responsibility in accordance with law.

Whoever abandons an infant shall be fined by a public security organ; if the act constitutes a crime, the offender shall be investigated for criminal responsibility in accordance with law.

Whoever sells his or her own child, his or her illegal gains shall be confiscated by a public security organ and he or she shall also be fined; if the act constitutes a crime, the offender shall be investigated for criminal responsibility in accordance with law.

## Chapter VI Supplementary Provisions

Article 32 The people's congress and its standing committee in a national autonomous area may, on the basis of the principles of this Law and in the light of the local conditions, formulate adaptive or supplementary provisions. The relevant regulations of a national autonomous region shall be submitted to the Standing Committee of the National People's Congress for the record. The relevant regulations of an autonomous prefecture or autonomous county shall be submitted to the standing committee of the provincial or autonomous region's people's congress for approval before coming into effect, and shall also be submitted to the Standing Committee of the National People's Congress for the record.

Article 33 The State Council may, in accordance with this Law, formulate measures for its implementation.

Article 34 This Law shall go into effect as of April 1, 1992.

## **Law of Succession of the People's Republic of China**

Adopted at the Third Session of the Sixth National People's Congress on April 10, 1985 and promulgated by Order No.24 of the President of the People's Republic of China on April 10, 1985

### Contents

#### Chapter I General Provisions

#### Chapter II Statutory Succession

#### Chapter III Testamentary Succession and Legacy

#### Chapter IV Disposition of the Estate

#### Chapter V Supplementary Provisions

#### Chapter I General Provisions

Article 1 This Law is enacted pursuant to the provisions of the Constitution of the People's Republic of China with a view to protecting the right of citizens to inherit private property.

Article 2 Succession begins at the death of a citizen.

Article 3 Estate denotes the lawful property owned by a citizen personally at the time of his death, which consists of:

- (1) his income;
- (2) his houses, savings and articles of everyday use;
- (3) his forest trees, livestock and poultry;
- (4) his cultural objects, books and reference materials;
- (5) means of production lawfully owned by him;
- (6) his property rights pertaining to copyright and patent rights; and
- (7) his other lawful property.

Article 4 Personal benefits accruing from a contract entered into by an individual are heritable in accordance with the provisions of this Law. Contracting by an individual, if permitted by law to be continued by the successor, shall be treated in accordance with the terms of the contract.

Article 5 Succession shall, after its opening, be handled in accordance with the provisions of statutory succession; where a will exists, it shall be handled in accordance with testamentary succession or as legacy; where there is an agreement for legacy in return for support, the former shall be handled in accordance with the terms of the agreement.

Article 6 The right to inheritance or legacy of a competent person shall be exercised on his behalf by his statutory agent.

The right to inheritance or legacy of a person with limited capacity shall be exercised on his behalf by his statutory agent or by such person himself after obtaining the consent of his statutory agent.

Article 7 A successor shall be disinherited upon his commission of any one of the following acts:

- (1) intentional killing of the decedent;
- (2) killing any other successor in fighting over the estate;
- (3) a serious act of abandoning or maltreating the decedent; or
- (4) a serious act of forging, tampering with or destroying the will.

Article 8 The time limit for institution of legal proceedings pertaining to disputes over the right to inheritance is two years, counting from the day the successor became or should have become aware of the violation of his right to inheritance. No legal proceedings, however, may be instituted after the expiration of a period of 20 years from the day succession began.

## Chapter II Statutory Succession

Article 9 Males and females are equal in their right to inheritance.

Article 10 The estate of the decedent shall be inherited in the following order:

First in order: spouse, children, parents.

Second in order: brothers and sisters, paternal grand parents, maternal grandparents.

When succession opens, the successor(s) first in order shall inherit to the exclusion of the successor(s) second in order. The successor(s) second in order shall inherit in default of any successor first in order.

The "children" referred to in this Law include legitimate children, illegitimate children and adopted children, as well as step-children who supported or were supported by the decedent.

The "parents" referred to in this Law include natural parents and adoptive parents, as well as step-parents who supported or were supported by the decedent.

The "brothers and sisters" referred to in this Law include blood brothers and sisters, brothers and sisters of half blood, adopted brothers and sisters, as well as step-brothers and step-sisters who supported or were supported by the decedent.

Article 11 Where a decedent survived his child, the direct lineal descendants of the predeceased child shall inherit in subrogation. Descendants who inherit in subrogation generally shall take only the share of the estate their father or mother is entitled to.

Article 12 Widowed daughters-in-law or sons-in-law who have made the predominant contributions in maintaining their parents-in-law shall, in relationship to their parents-in-law, be regarded as successors first in order.

Article 13 Successors same in order shall, in general, inherit in equal shares.

At the time of distributing the estate, due consideration shall be given to successors who are unable to work and have special financial difficulties.

At the time of distributing the estate, successors who have made the predominant contributions in maintaining the decedent or have lived with the decedent may be given a larger share.

At the time of distributing the estate, successors who had the ability and were in a position to maintain the decedent but failed to fulfil their duties shall be given no share or a smaller share of the estate.

Successors may take unequal shares if an agreement to that effect is reached among them.

Article 14 An appropriate share of the estate may be given to a person, other than a successor, who depended on the support of the decedent and who neither can work nor has a source of income, or to a person, other than a successor, who was largely responsible for supporting the decedent.

Article 15 Questions pertaining to succession should be dealt with through consultation by and among the successors in the spirit of mutual understanding and mutual accommodation, as well as of amity and unity. The time and mode for partitioning the estate and the shares shall be decided by the successors through consultation. If no agreement is reached through consultation, they may apply to a People's Mediation Committee for mediation or institute legal proceedings in a people's court.

### Chapter III Testamentary Succession and Legacy

Article 16 A citizen may, by means of a will made in accordance with the provisions of this Law, dispose of the property he owns and may appoint a testamentary executor for the purpose.

A citizen may, by making a will, designate one or more of the statutory successors to inherit his personal property.

A citizen may, by making a will, donate his personal property to the state or a collective, or bequeath it to persons other than the statutory successors.

Article 17 A notarial will is one made by a testator through a notary agency.

A testator-written will is one made in the testator's own handwriting and signed by him, specifying the date of its making.

A will written on behalf of the testator shall be witnessed by two or more witnesses, of whom one writes the will, dates it and signs it along with the other witness or witnesses and with the testator.

A will made in the form of a sound-recording shall be witnessed by two or more witnesses.

A testator may, in an emergency situation, make a nuncupative will, which shall be witnessed by two or more witnesses. When the emergency situation is over and if the testator is able to make a will in writing or in the form of a sound-recording, the nuncupative will he has made shall be invalidated.

Article 18 None of the following persons shall act as a witness of a will:

- (1) persons with no capacity or with limited capacity;
- (2) successors and legatees; or
- (3) persons whose interests are related to those of the successors and legatees.

Article 19 Reservation of a necessary portion of an estate shall be made in a will for a successor who neither can work nor has a source of income.

Article 20 A testator may revoke or alter a will he previously made.

Where several wills that have been made conflict with one another in content, the last one shall prevail.

A notarial will may not be revoked or altered by a testator-written will, a will written on behalf of the testator, a will in the form of a sound-recording or a nuncupative will.

Article 21 Where there are obligations attached to testamentary succession or legacy, the successor or legatee shall perform them. Anyone who fails to perform the obligations without proper reasons may, upon request by a relevant organization or individual, entail nullification of his right to inheritance by a people's court.

Article 22 Wills made by persons with no capacity or with limited capacity shall be void.

Wills shall manifest the genuine intention of the testators; those made under duress or as a result of fraud shall be void.

Forged wills shall be void.

Where a will has been tampered with, the affected parts of it shall be void.

## Chapter IV Disposition of the Estate

Article 23 After the opening of succession, a successor who has knowledge of the death of the decedent should promptly notify the other successors and the testamentary executor. If none of the successors knows about the death of the decedent, or if there is no way to make the notification, the organization to which the decedent belonged before his death or the residents' committee or villagers' committee at his place of residence shall make the notification.

Article 24 Anyone who has in his possession the property of the decedent shall take good care of such property and no one is allowed to misappropriate it or contend for it.

Article 25 A successor who, after the opening of succession, disclaims inheritance should make known his decision before the disposition of the estate. In the absence of such an indication, he is deemed to have accepted the inheritance.

A legatee should, within two months from the time he learns of the legacy, make known whether he accepts it or disclaims it. In the absence of such an indication within the specified period, he is deemed to have disclaimed the legacy.

Article 26 If a decedent's estate is partitioned, half of the joint property acquired by the spouses in the course of their matrimonial life shall, unless otherwise agreed upon, be first allotted to the surviving spouse as his or her own property; the remainder shall constitute the decedent's estate.

If the decedent's estate is a component part of the common property of his family, that portion of the property belonging to the other members of the family shall first be separated at the time of the partitioning of the decedent's estate.

Article 27 Under any of the following circumstances, the part of the estate affected shall be dealt with in accordance with statutory succession:

- (1) where inheritance is disclaimed by a testamentary successor or the legacy is disclaimed by a legatee;
- (2) where a testamentary successor is disinherited;
- (3) where a testamentary successor or legatee predeceases the testator;
- (4) where an invalidated portion of the will involves part of the estate; or
- (5) where no disposition is made under the will for part of the estate.

Article 28 At the time of the partitioning of the estate, reservation shall be made for the share of an unborn child. The share reserved shall, if the baby is stillborn, be dealt with in accordance with statutory succession.

Article 29 The partitioning of a decedent's estate shall be conducted in a way beneficial to the requirements of production and livelihood; it shall not diminish the usefulness of the estate.

If the estate is unsuitable for partitioning, it may be disposed of by such means as price evaluation, appropriate compensation or co-ownership.

Article 30 A surviving spouse who re-marries is entitled to dispose of the property he or she has inherited, subject to no interference by any other person.

Article 31 A citizen may enter into a legacy-support agreement with a person who, in accordance with the agreement, assumes the duty to support the former in his or her lifetime and attends to his or her interment after death, in return for the right to legacy.

A citizen may enter into a legacy-support agreement with an organization under collective ownership which, in accordance with the agreement, assumes the duty to support the former in his or her lifetime and attends to his or her interment after death, in return for the right to legacy.

Article 32 An estate which is left with neither a successor nor a legatee shall belong to the state or, where the decedent was a member of an organization under collective ownership before his or her death, to such an organization.

Article 33 The successor to an estate shall pay all taxes and debts payable by the decedent according to law, up to the actual value of such estate, unless the successor pays voluntarily in excess of the limit.

The successor who disclaims inheritance assumes no responsibility for the payment of taxes and debts payable by the decedent according to law.

Article 34 The carrying out of a legacy shall not affect the payment of taxes and debts payable by the legator according to law.

## Chapter V Supplementary Provisions

Article 25 The people's congress of a national autonomous area may, in accordance with the principles of this Law and the actual practices of the local nationality or nationalities with regard to property inheritance, enact adaptive or supplementary provisions. Provisions made by autonomous regions shall be reported to the Standing Committee of the National People's Congress for the record. Provisions made by autonomous prefectures or autonomous counties shall become effective after being reported to and approved by the standing committee of the people's congress of the relevant province or autonomous region and shall be reported to the Standing Committee of the National People's Congress for the record.

Article 36 For inheritance by a Chinese citizen of an estate outside the People's Republic of China or of an estate of a foreigner within the People's Republic of China, the law of the place of domicile



of the decedent shall apply in the case of movable property; in the case of immovable property, the law of the place where the property is located shall apply.

For inheritance by a foreigner of an estate within the People's Republic of China or of an estate of a Chinese citizen outside the People's Republic of China, the law of the place of domicile of the decedent shall apply in the case of movable property; in the case of immovable property, the law of the place where the property is located shall apply.

Where treaties or agreements exist between the People's Republic of China and foreign countries, matters of inheritance shall be handled in accordance with such treaties or agreements.

Article 37 This Law shall go into effect as of October 1, 1985.

## **Labour Law of the People's Republic of China**

Adopted at the Eighth Meeting of the Standing Committee of the Eighth National People's Congress on July 5, 1994 and promulgated by Order No. 28 of the President of the People's Republic of China

### Contents

#### Chapter I General Provisions

#### Chapter II Promotion of Employment

#### Chapter III Labour Contracts and Collective Contracts

#### Chapter IV Working Hours, Rest and Vacations

#### Chapter V Wages

#### Chapter VI Occupational Safety and Health

#### Chapter VII Special Protection for Female Staff and Workers and Juvenile Workers

#### Chapter VIII Vocational Training

#### Chapter IX Social Insurance and Welfare

#### Chapter X Labour Disputes

#### Chapter XI Supervision and Inspection

#### Chapter XII Legal Responsibility

#### Chapter XIII Supplementary Provisions

#### Chapter I General Provisions

Article 1 This Law is formulated in accordance with the Constitution in order to protect the legitimate rights and interests of labourers, regulate labour relationship, establish and safeguard a labour system suited to the socialist market economy, and promote economic development and social progress.

Article 2 This Law shall apply to enterprises, individual economic organizations (hereinafter referred to as employing units) and labourers who form a labour relationship therewith within the territory of the People's Republic of China.

State organs, institutions and public organizations as well as labourers who form a labour contract relationship therewith shall be bound by this Law.

Article 3 Labourers shall have equal right to employment and choice of occupation, the right to remuneration for labour, to rest and vacations, to protection of occupational safety and health, to training in vocational skills, to social insurance and welfare, to submission of labour disputes for settlement and other rights relating to labour stipulated by law.

Labourers shall fulfill their labour tasks, improve their vocational skills, follow rules on occupational safety and health, and observe labour discipline and professional ethics.

Article 4 The employing units shall establish and perfect rules and regulations in accordance with the law so as to ensure that labourers enjoy the right to work and fulfill labour obligations.

Article 5 The State shall take various measures to promote employment, develop vocational education, lay down labour standards, regulate social incomes, perfect social insurance system, coordinate labour relationship, and gradually raise the living standard of labourers.

Article 6 The State shall advocate the participation of labourers in social voluntary labour and the unfolding of labour emulation and rational proposals campaign, encourage and protect labourers in conducting scientific research, technical renovation, inventions and creations, and commend and reward model and advanced workers.

Article 7 Labourers shall have the right to participate in, and organize, trade unions in accordance with the law.

Trade unions shall represent and safeguard the legitimate rights and interests of labourers, and independently carry out their activities in accordance with the law.

Article 8 Labourers shall take part in democratic management or negotiate with the employing units on an equal footing about protection of the legitimate rights and interests of labourers through the assembly of staff and workers or their congress or other forms as provided by law.

Article 9 The administrative department of labour under the State Council shall be in charge of the management of labour in the whole country.

The administrative departments of labour under the local people's governments at or above the county level shall be in charge of the management of labour in their respective administrative areas.

## Chapter II Promotion of Employment

Article 10 The State shall create conditions for employment and increase opportunities therefore by means of promotion of economic and social development.

The State shall encourage enterprises, institutions and public organizations to initiate industries or expand businesses for the increase of employment, within the scope provided by laws, and administrative rules and regulations.

The State shall support labourers to achieve employment by organizing themselves on a voluntary basis or by engaging in individual businesses.

Article 11 Local people's governments at various levels shall take measures, by developing employment agencies of various forms, to provide employment services.

Article 12 Labourers, regardless of their ethnic group, race, sex, or religious belief, shall not be discriminated against in employment.

Article 13 Women shall enjoy the equal right, with men, to employment. With exception of the special types of work or post unsuitable to women as prescribed by the State, no unit may, in employing staff and workers, refuse to employ women by reason of sex or raise the employment standards for women.

Article 14 In respect of the employment of the disabled, people of minority ethnic groups, and demobilized army men, where there are special stipulations in laws, rules and regulations, such stipulations shall apply.

Article 15 No employing units are allowed to recruit minors under the age of 16.

Institutions of literature and art, physical culture, and special arts and crafts that recruit minors under the age of 16 must go through the formalities of examination and approval in accordance with the relevant provisions of the State and guarantee their right to compulsory education.

### Chapter III Labour Contracts and Collective Contracts

Article 16 A labour contract is an agreement that establishes the labour relationship between a laborer and an employing unit and defines the rights and obligations of respective parties.

A labour contract shall be concluded where a labour relationship is to be established.

Article 17 Conclusion and modification of a labour contract shall follow the principles of equality, voluntariness and agreement through consultation, and shall not run counter to the stipulations of laws, administrative rules and regulations.

A labour contract once concluded in accordance with the law shall be legally binding. The parties must fulfill the obligations stipulated in the labour contract.

Article 18 The following labour contracts shall be invalid:

- (1) Labour contracts violating laws, administrative rules and regulations; and
- (2) Labour contracts concluded by means of fraud or intimidation, etc.

An invalid labour contract shall have no legal effect from the time of its conclusion. Where a part of a labour contract is confirmed as invalid and where the validity of the remaining part is not affected, the remaining part shall remain valid.

The invalidity of a labour contract shall be confirmed by a labour dispute arbitration committee or a people's court.

Article 19 A labour contract shall be concluded in written form and contain the following clauses:

- (1) Term of a labour contract;
- (2) Work assignment;
- (3) Labour protection and working conditions;
- (4) Labour remuneration;
- (5) Labour discipline;
- (6) Conditions for the termination of the labour contract; and
- (7) Liabilities for the violation of the labour contract.

Apart from the required clauses specified in the preceding paragraph, a labour contract may contain other clauses agreed upon by the parties through consultation.

Article 20 The term of a labour contract is classified into fixed term, non-fixed term and the completion of a specific assignment as a term.

Where a labourer has worked in the same employing unit for ten consecutive years or more and both parties agree to extend the term of the labour contract, if the labourer requests the conclusion of a labour contract with a non-fixed term, a labour contract with a non-fixed term shall be concluded.

Article 21 A probation period may be specified in a labour contract. The probation period shall not exceed six months.

Article 22 The parties to a labour contract may stipulate in the labour contract matters concerning keeping business secrets of the employing unit.

Article 23 A labour contract shall terminate immediately upon the expiration of its term or the occurrence of the conditions for the termination of the labour contract as agreed upon by the parties.

Article 24 A labour contract may be cancelled by agreement reached between the parties through consultation.

Article 25 If a labourer is under any of the following circumstances, the employing unit may cancel the labour contract with him:

- (1) Having been proved not up to the requirements for recruitment during the probation period;

- (2) Having seriously violated labour discipline or the rules and regulations of the employing unit;
- (3) Having caused great losses to the employing unit through gross neglect of duty or malpractice for personal gains; and
- (4) Having been investigated for criminal responsibility in accordance with the law.

Article 26 In any of the following circumstances, the employing unit may cancel the labour contract, however, a written notice shall be given to the labourer concerned 30 days in advance:

- (1) Where a labourer is unable to take up his original work or any work specially arranged by the employing unit after completion of the period of his medical treatment for illness or not work-related injury;
- (2) Where a labourer is unqualified for his work and remains unqualified even after receiving a training or after readjusting the work post; and
- (3) Where the objective conditions taken as the basis for the conclusion of the contract have changed so greatly that the original labour contract cannot be carried out, and no agreement on modification of the labour contract can be reached through consultation by the parties.

Article 27 Where it is really necessary for an employing unit to cut down the number of workforce when it comes to the brink of bankruptcy and undergoes a statutory consolidation or runs deep into difficulties in production and management, the employing unit shall explain the situation to the trade union or all of its staff and workers 30 days in advance, solicit opinions from them and report to the administrative department of labour before it may cut down the number of workforce.

Where the employing unit that cut down the number of its workforce in accordance with this Article is to recruit personnel within six months, it shall give priority in employment to the persons who have been laid off.

Article 28 Where an employing unit cancelled its labour contracts according to the stipulations in Article 24, Article 26 and Article 27 of this Law, it shall make economic compensations in accordance with the relevant provisions of the State.

Article 29 Where a labourer is under any of the following circumstances, the employing unit shall not cancel its labour contract with the labourer by availing itself of the stipulations in Article 26 and Article 27 of this Law:

- (1) Being confirmed to have totally or partially lost the ability to work due to occupational diseases or work-related injuries;
- (2) Receiving medical treatment for diseases or injuries within the prescribed period of time;
- (3) Being a female staff member or worker during her pregnant, puerperal, or breast-feeding period; or
- (4) Other circumstances stipulated by laws, administrative rules and regulations.

Article 30 Where an employing unit cancelled its labour contract and the trade union considers it inappropriate, the trade union shall have the right to put forward its opinions. If the employing unit violated the law, rules or regulations or labour contracts, the trade union shall have the right to request that the matter be handled anew. Where the labourer applies for arbitration or institutes a lawsuit, the trade union shall render him support and assistance in accordance with the law.

Article 31 If a labourer is to cancel his labour contract, he shall give a written notice to the employing unit 30 days in advance.

Article 32 A labourer may, in any of the following circumstances, notify at any time the employing unit of his cancelation of the labour contract:

- (1) Within the probation period;
- (2) Where the employing unit forces the labourer to work by means of violence, intimidation or illegal restriction of personal freedom; or
- (3) Failure on the part of the employing unit to pay labour remuneration or to provide working conditions as agreed upon in the labour contract.

Article 33 The staff and workers of an enterprise as one party may conclude a collective contract with the enterprise on matters relating to labour remuneration, working hours, rest and vacations, occupational safety and health, insurance and welfare. The draft collective contract shall be submitted to the congress of the staff and workers or to all the staff and workers for discussion and adoption.

A collective contract shall be concluded by the trade union on behalf of the staff and workers with the enterprise; in an enterprise where the trade union has not yet been set up, such contract shall be concluded by the representatives elected by the staff and workers with the enterprise.

Article 34 Upon conclusion of a collective contract, it shall be submitted to the administrative department of labour. If no objections have been raised by the administrative department of labour within 15 days from the date of receipt of the text of the contract, the collective contract shall go into effect automatically.

Article 35 A collective contract concluded in accordance with the law shall be binding on both the enterprise and all of its staff and workers. The standards of working conditions and labour remuneration agreed upon in labour contracts concluded between individual labourers and the enterprise shall not be lower than those stipulated in the collective contract.

#### Chapter IV Working Hours, Rest and Vacations

Article 36 The State shall practise a working hour system wherein labourers shall work for no more than eight hours a day and no more than 44 hours a week on the average.

Article 37 In case of labourers working on the basis of piecework, the employing unit shall rationally fix quotas of work and standards of piecework remuneration in accordance with the working hour system stipulated in Article 36 of this Law.

Article 38 The employing unit shall guarantee that its staff and workers have at least one day off in a week.

Article 39 Where an enterprise can not follow the stipulations in Article 36 and Article 38 of this Law due to the special nature of its production, it may, with the approval of the administrative department of labour, adopt other rules on working hours and rest.

Article 40 The employing unit shall, during the following festivals, arrange holidays for its labourers in accordance with the law:

- (1) The New Year's Day;
- (2) The Spring Festival;
- (3) The International Labour Day;
- (4) The National Day; and
- (5) Other holidays provided by laws, rules and regulations.

Article 41 The employing unit may extend working hours as necessitated by its production or business operation after consultation with the trade union and labourers, but the extended working hour per day shall generally not exceed one hour; if such extension is needed for special reasons, under the condition that the health of labourers is guaranteed, the extended hours shall not exceed three hours per day. However, the total extension in a month shall not exceed thirty six hours.

Article 42 Under any of the following circumstances, the extension of working hours shall not be subject to restriction of the provisions of Article 41 of this Law :

- (1) Where in the event of natural disasters, accidents or for other reasons, the life and health of labourers or the safety of property is in peril, and urgent dealing is needed;
- (2) Where in the event of breakdown of production equipment, transportation lines or public facilities, production and public interests are affected; and rush repair must be done without any delay; or (3) Other circumstances stipulated by laws, administrative rules and regulations.

Article 43 The employing unit shall not extend working hours of labourers in violation of the provisions of this Law.

Article 44 Under any of the following circumstances, the employing unit shall, according to the following standards, pay labourers remunerations that are higher than those for normal working hours:

- (1) To pay no less than 150 per cent of the normal wages if an extension of working hours is arranged;



(2) To pay no less than 200 per cent of the normal wages if work is arranged on off days and no make-up off days can be arranged; or

(3) To pay no less than 300 per cent of the normal wages if work is arranged on statutory holidays.

Article 45 The State shall practise a system of annual vacation with pay.

Labourers who have worked for one successive year or more shall be entitled to an annual vacation with pay. The specific measures therefore shall be formulated by the State Council.

## Chapter V Wages

Article 46 The distribution of wages shall follow the principle of distribution according to work and equal pay for equal work.

The level of wages shall be gradually raised on the basis of economic development. The State shall exercise macro-control over the total payroll.

Article 47 The employing unit shall, based on the characteristics of its production and business operation as well as economic results, independently determine the form of wage distribution and wage level for its own unit according to law.

Article 48 The State shall implement a system of guaranteed minimum wages. The specific standards of minimum wages shall be determined by the people's governments of provinces, autonomous regions or municipalities directly under the Central Government and submitted to the State Council for the record.

Wages to be paid to labourers by the employing unit shall not be lower than the local standards of minimum wages.

Article 49 The determination and readjustment of the standards of minimum wages shall be made with reference to the following factors in a comprehensive manner:

- (1) The lowest living expenses of labourers themselves plus that of the average number of family members they support;
- (2) The average wage level of the society as a whole;
- (3) The labour productivity;
- (4) The situation of employment; and
- (5) The regional differences in economic development.

Article 50 Wages shall be paid monthly to labourers themselves in the form of cash. The wages to be paid to labourers shall not be embezzled nor the payment thereof delayed without justification.

Article 51 The employing unit shall pay wages according to law to labourers for their statutory holidays, marriage or funeral leaves or periods when they participate in social activities in accordance with the law.

## Chapter VI Occupational Safety and Health

Article 52 The employing unit must establish and perfect the system of occupational safety and health, strictly implement the rules and standards of the State with regard to occupational safety and health, carry out education among labourers in occupational safety and health, prevent accidents in the process of work, and lessen occupational hazards.

Article 53 Facilities of occupational safety and health must meet the standards set by the State.

Facilities of occupational safety and health for a newly-built, renovated or expanded project must be designed, constructed and put into operation or use simultaneously with the main part of the project.

Article 54 The employing unit must provide labourers with occupational safety and health conditions conforming to the provisions of the State and necessary articles of labour protection, and provide regular health examination for labourers engaged in work with occupational hazards.

Article 55 Labourers to be engaged in specialized operations must receive specialized training and acquire qualifications for such special operations.

Article 56 Labourers must strictly abide by rules on safe operation in the process of their work.

If the managerial personnel of the employing unit give command contrary to the established rules and compel labourers to operate under unsafe conditions, the labourers shall have the right to refuse such operation; labourers shall have the right to criticize, report or file charges against any acts endangering the safety of their life or health.

Article 57 The State shall establish a system of statistical report and disposition of accidents of injuries or deaths and cases of occupational diseases. The administrative departments of labour and other relevant departments under the people's governments at or above the county level and the employing units shall, according to law, carry out statistical report and disposition with respect to accidents of injuries or deaths occurred to labourers in the process of their work and situations of occupational diseases.

## Chapter VII Special Protection for Female Staff and Workers and Juvenile Workers

Article 58 The State shall provide special protection to female staff and workers and juvenile workers.

" Juvenile Workers " refer to labourers who have reached the age of 16 but under the age of 18 .

Article 59 It is prohibited to arrange for female staff and workers to engage in work down the pit of mines, or work with Grade IV physical labour intensity as prescribed by the State, or other work forbidden to women.

Article 60 It is prohibited to arrange for female staff and workers during their menstrual periods to engage in work high above the ground, under low temperature, or in cold water or work with Grade III physical labour intensity as prescribed by the State.

Article 61 It is prohibited to arrange for women workers or staff members during their pregnancy to engage in work with Grade III physical labour intensity as stipulated by the State or other work forbidden to pregnant women. It is prohibited to arrange for women workers or staff members who have been pregnant for seven months or more to work in extended working hours or to work night shifts.

Article 62 Female staff and workers shall be entitled to no less than ninety days of maternity leaves for childbirth.

Article 63 It is prohibited to arrange for female staff and workers during the period of breast-feeding their babies of less than one year old to engage in work with Grade III physical labour intensity as prescribed by the State or other labour forbidden to women during their breast-feeding period, or to work in extended working hours or to work night shifts.

Article 64 It is prohibited to arrange for juvenile workers to engage in work that is down the pit of mines, or poisonous or harmful, or with Grade IV physical labour intensity as prescribed by the State, or other work forbidden to them.

Article 65 The employing unit shall provide regular physical examinations to juvenile workers.

## Chapter VIII Vocational Training

Article 66 The State shall take various measures, through various channels, to expand vocational training undertakings so as to develop professional skills of labourers, improve their qualities, and raise their employment capability and work ability.

Article 67 People's governments at various levels shall incorporate the development of vocational training into their plans of social and economic development, encourage and support enterprises, institutions, public organizations and individuals, if conditions permit, to sponsor vocational training in various forms.

Article 68 The employing unit shall establish a system of vocational training, retain and use vocational training funds in accordance with the provisions of the State, and provide labourers with vocational training in a planned way and in the light of the actual conditions of the unit.

Labourers to be engaged in technical work must receive training before taking up their posts.

Article 69 The State shall determine occupational classification, set professional skill standards for the occupations classified, and practise a system of vocational qualification certification. The examination and verification organizations approved by the government shall be charged with the responsibility of conducting examination and verification of the professional skills of labourers.

## Chapter IX Social Insurance and Welfare

Article 70 The State shall develop social insurance undertakings, establish a social insurance system, and set up social insurance funds so that labourers may receive assistance and compensations under such circumstances as old age, illness, work-related injury, unemployment and child-birth.

Article 71 The level of social insurance shall be in proportion to the level of social and economic development and the social affordability.

Article 72 The sources of social insurance funds shall be determined according to the branches of insurance, and an overall raising of social insurance funds shall be practised step by step. The employing unit and labourers must participate in social insurance and pay social insurance premiums in accordance with the law.

Article 73 Labourers shall, under the following circumstances , enjoy social insurance benefits in accordance with the law :

- (1) Being retired;
- (2) Being ill or injured;
- (3) Being injured or disabled while on duty or contracted with occupational diseases;
- (4) Being unemployed; or
- (5) Childbirth.

After the death of a labourer, the surviving family members of the deceased shall be entitled to subsidies for such survivors according to law.

The conditions and standards for labourers to enjoy social insurance benefits shall be stipulated by laws, rules and regulations.

The social insurance money that labourers are entitled to must be paid on schedule and in full.

Article 74 The agencies in charge of social insurance funds shall collect, expend, manage and operate the funds in accordance with legal provisions, and assume the responsibility to preserve and increase the value of such funds.

The supervisory organizations of social insurance funds shall exercise supervision over the revenue and expenditure, management and operation of social insurance funds in accordance with the stipulations of laws.

The establishment and functions of the agencies in charge of social insurance funds and the supervisory organizations of social insurance funds shall be prescribed by law.

No organization or individual is allowed to misappropriate social insurance funds.

Article 75 The State shall encourage the employing unit to set up supplementary insurance for labourers according to its actual conditions.

The State shall advocate that individual labourers practise insurance in the form of saving deposits.

Article 76 The State shall develop social welfare undertakings, construct public welfare facilities, and provide conditions for labourers to rest, recuperate and convalesce.

The employing unit shall create conditions to improve collective welfare and increase labourers' social benefits.

## Chapter X Labour Dispute

Article 77 If a labour dispute between the employing unit and a labourer arises, the parties may apply for mediation or arbitration or take legal proceedings according to law, or may seek for a settlement through consultation.

The principle of mediation shall be applicable to the procedures of arbitration and litigation.

Article 78 The settlement of a labour dispute shall follow the principle of legality, justness and promptness so as to safeguard the legitimate rights and interests of the parties in accordance with the law.

Article 79 After a labour dispute arises, the parties may apply to the labour dispute mediation committee of their unit for mediation; if the mediation fails and one of the parties requests arbitration, that party may apply to the labour dispute arbitration committee for arbitration. Either party may also directly apply to the labour dispute arbitration committee for arbitration. If any party is not satisfied with the decision of arbitration, the party may bring a lawsuit to the people's court.

Article 80 A labour dispute mediation committee may be established within the employing unit. The committee shall be composed of representatives of the staff and workers, the employing unit, and the trade union. The chairmanship of the committee shall be assumed by a representative of the trade union.

If an agreement is reached through mediation in the case of a labour dispute, it shall be implemented by the parties.

Article 81 A labour dispute arbitration committee shall be composed of representatives of the administrative department of labour, representatives from the trade union at the corresponding level, and representatives of the employing unit. The chairmanship of the committee shall be assumed by a representative of the administrative department of labour.

Article 82 The party that requests arbitration shall file a written application with a labour dispute arbitration committee within 60 days from the date of the occurrence of the labour dispute. The arbitration committee shall generally make an arbitration decision within 60 days from the date of receiving the application. If no objections have been raised, the parties must execute the arbitration decision.

Article 83 Where a party to a labour dispute is not satisfied with the arbitration decision, the party may bring a lawsuit to the people's court within 15 days from the date of receiving the award of arbitration. Where a party has neither brought a lawsuit nor executed the arbitration decision within the period prescribed by law, the other party may apply to the people's court for enforcement.

Article 84 Where a dispute arises from the conclusion of a collective contract and no settlement can be reached through consultation by the parties concerned, the administrative department of labour under the local people's government may coordinate with the parties and organizations concerned in settling the dispute.

Where a dispute arises from the fulfillment of a collective contract and no settlement can be reached through consultation by the parties concerned, the parties may apply to the labour dispute arbitration committee for arbitration. If any party is not satisfied with the arbitration decision, it may bring a lawsuit to the people's court within 15 days from the date of receiving the award of arbitration.

## Chapter XI Supervision and Inspection

Article 85 The administrative departments of labour under the people's governments at or above the county level shall, in accordance with the law, supervise and inspect the implementation of laws, rules and regulations on labour by the employing unit, and have the power to stop any acts that run counter to laws, rules and regulations on labour and order the rectification thereof.

Article 86 The inspectors from the administrative departments of labour under the people's governments at or above the county level shall, while performing their public duties, have the right to enter into the employing units to make investigations about the implementation of laws, rules and regulations on labour, consult the necessary data and inspect the labour sites.

The inspectors from the administrative departments of labour under the people's governments at or above the county level must produce their papers while performing public duties, enforce laws impartially, and abide by the relevant regulations.

Article 87 Relevant departments under the people's governments at or above the county level shall, within the scope of their respective functions and responsibilities, supervise the implementation of laws, rules and regulations on labour by the employing units.

Article 88 Trade unions at various levels shall, in accordance with the law, safeguard the legitimate rights and interests of labourers, and supervise the implementation of laws, rules and regulations on labour by the employing units.

Any organizations or individuals shall have the right to expose and accuse any acts that violate the law, rules and regulations on labour.

## Chapter XII Legal Responsibility

Article 89 Where the rules and regulations on labour formulated by the employing unit run counter to the provisions of laws, rules and regulations, the administrative department of labour shall give a warning to the unit, and order it to make corrections; where any harms have been caused to labourers, the unit shall be liable for compensation.

Article 90 Where the employing unit, in violation of the stipulations of this Law, extends the working hours of labourers, the administrative department of labour shall give it a warning, order it to make corrections, and may impose a fine thereon.

Article 91 Where the employing unit commits any of the following acts infringing upon the legitimate rights and interests of labourers, the administrative department of labour shall order it to pay labourers remuneration of wages or to make up for economic losses, and may also order it to pay compensation:

- (1) To embezzle wages or delay in paying wages to labourers without reason;
- (2) To refuse to pay labourers remuneration of wages for the extended working hours;
- (3) To pay labourers wages below the local standard of minimum wages; or
- (4) To fail to provide labourers with economic compensations in accordance with the provisions of this Law after cancellation of labour contracts.

Article 92 Where the occupational safety facilities and health conditions of an employing unit do not comply with the provisions of the State or the unit fails to provide labourers with necessary labour protection articles and labour protection facilities, the administrative department of labour or other relevant departments shall order it to make corrections, and may impose a fine thereon. If the circumstances are serious, the above-said departments shall refer the matter to the people's government at or above the county level for a decision ordering the unit to stop production for consolidation. If the unit fails to take measures against the hidden danger of an accident, which leads to the occurrence of a serious accident, thus causing losses of lives and properties to

labourers, persons who are held responsible shall be investigated for criminal responsibility by applying *mutatis mutandis* the provisions of Article 187 of the Criminal Law.

Article 93 Where the employing unit compels labourers to operate against the established rules and under unsafe conditions, thus causing major accident of injuries and deaths, and serious consequences, persons who are held responsible shall be investigated for criminal responsibility according to law.

Article 94 Where the employing unit illegally recruits minors under the age of 16, the administrative department of labour shall order it to make corrections, and impose a fine thereon. If the circumstances are serious, the administrative department for industry and commerce shall revoke its business license.

Article 95 Where the employing unit, in violation of the provisions of this Law on the protection of female staff and workers and juvenile workers, infringes upon their legitimate rights and interests, the administrative department of labour shall order it to make corrections, and impose a fine thereon. Where any harm has been done to female staff and workers and juvenile workers, the unit shall be liable for compensation.

Article 96 Where the employing unit commits one of the following acts, persons who are held responsible shall be punished by the public security organ with a detention of 15 days or less, or a fine, or a warning; where the case constitutes a crime, persons who are held responsible shall be investigated for criminal responsibility according to law:

- (1) Compelling labourers to work by means of violence, intimidation or illegal restriction of personal freedom; or
- (2) Humiliating, imposing corporal punishment upon, beating, illegally searching, or detaining labourers.

Article 97 Where an invalid contract concluded for reasons of the employing unit has caused damage to labourers, the employing unit shall be liable for compensation.

Article 98 Where the employing unit, in violation of the conditions specified in this Law, cancels labour contracts or intentionally delays the conclusion of labour contracts, the administrative department of labour shall order it to make corrections; where any damage has been caused to labourers, the employing unit shall be liable for compensation according to law.

Article 99 Where an employing unit recruits labourers whose labour contracts have not yet been cancelled, thus causing economic losses to the former employing unit of such labourers, the employing unit shall assume joint liabilities for compensation according to law.

Article 100 Where the employing unit fails to pay social insurance premiums without reason, the administrative department of labour shall order it to pay within a fixed period. Where the unit still fails to make the payment at the expiration of the time limit, an overdue fine may be demanded.

Article 101 Where the employing unit unjustifiably obstructs the administrative department of labour and other relevant departments as well as their functionaries from exercising the powers of



supervision and inspection or retaliates against informers, the administrative department of labour or other relevant departments shall impose a fine upon the unit. Where the case constitutes a crime, persons who are held responsible shall be investigated for criminal responsibility according to law.

Article 102 Where labourers cancel labour contracts in violation of the conditions specified in this Law or violate terms on secret-keeping matters agreed upon in the labour contracts, thus causing economic losses to the employing unit, such labourers shall be liable for compensation in accordance with the law.

Article 103 Where functionaries of the administrative department of labour or other relevant departments abuse their functions and powers, neglect their duties, and engage in malpractices for selfish ends, where the case constitutes a crime, they shall be investigated for criminal responsibility according to law; if the case does not constitute a crime, they shall be given administrative sanctions.

Article 104 Where functionaries of the State or personnel of the agencies in charge of social insurance funds misappropriate the social insurance funds, where the case constitutes a crime, they shall be investigated for criminal responsibility according to law.

Article 105 With respect to infringement of the legitimate rights and interests of labourers committed in violation of the provisions of this Law, where punishments are provided by other laws or administrative rules and regulations, the provisions thereon in such laws or administrative rules and regulations shall apply.

### Chapter XIII Supplementary Provisions

Article 106 People's governments of provinces, autonomous regions or municipalities directly under the Central Government shall, according to this Law and in light of their local conditions, work out the implementing measures for the system of labour contract and report them to the State Council for the record.

Article 107 This Law shall go into effect as of January 1, 1995.

# **Labor Contract Law of the People's Republic of China**

Adopted at the 28th Meeting of the Standing Committee of the Tenth National People's Congress on June 29, 2007

## Contents

### Chapter I General Provisions

### Chapter II Conclusion of a Labor Contract

### Chapter III Performance and Modification of a Labor Contract

### Chapter IV Revocation and Termination of a Labor Contract

### Chapter V Special Provisions

#### Section 1 A Collective Contract

#### Section 2 Labor Dispatch

#### Section 3 Part-Time Employment

### Chapter VI Supervision and Inspection

### Chapter VII Legal Responsibility

### Chapter VIII Supplementary Provisions

### Chapter I General Provisions

Article 1 This Law is enacted in order to improve the labor contract system, define the rights and obligations of both parties to a labor contract, protect the legitimate rights and interests of workers, and establish and develop a harmonious and stable labor relationship.

Article 2 This Law is applicable where organizations such as enterprises, self-employed economic organizations and private non-enterprise units within the territory of the People's Republic of China (hereinafter referred to as employing units) establish labor relationships with workers through concluding, performing, modifying, revoking or terminating labor contracts with them.

State organs, institutions and public organizations and the workers with whom they are to establish labor relationships shall conclude, perform, modify, revoke or terminate labor contracts in accordance with this Law.

Article 3 Labor contracts shall be concluded in adherence to the principles of lawfulness, fairness, equality, voluntariness, consensus through consultation, and good faith.

A labor contract concluded in accordance with law shall have binding force. Both the employing unit and the worker shall fulfill the obligations stipulated in the labor contract.

Article 4 Employing units shall establish and improve labor rules and regulations to ensure that workers enjoy the labor rights and fulfill the labor obligations.

When formulating or modifying the rules and regulations, or making decisions on important matters, which have a direct bearing on the immediate interests of workers, such as labor remuneration, working hours, rest and vacation, occupational safety and health, insurance and welfare, training, labor discipline and labor quota control, the employing unit shall, after discussion by the conference of workers or all the workers, put forward plans and suggestions and make decisions after consulting with the trade union or the representatives of the workers on an equal footing.

If, during the implementation of the rules and regulations or the decisions on important matters, the trade union or the workers hold that such rules, regulations or decisions are inappropriate, it or they are entitled to put forward the opinion to the employing unit, and have the rules, regulations or decisions modified and improved through consultation.

The employing unit shall make public or inform the workers of the rules and regulations, and the decisions on important matters, which have a direct bearing on the immediate interests of the workers.

Article 5 The administrative department of labor of the people's government at or above the county level shall, together with the representatives of the trade union and the enterprise, establish a sound tripartite mechanism for coordination of labor relationships, in order to jointly discuss and resolve the major issues concerning labor relationships.

Article 6 The trade union shall give assistance and guidance to the workers in lawfully concluding labor contracts with the employing unit and performing the same, and establish a collective consultation mechanism with the employing unit in order to protect the legitimate rights and interests of workers.

## Chapter II Conclusion of a Labor Contract

Article 7 A labor relationship is established by an employing unit with a worker as of the date the former employs the latter. An employing unit shall keep a register of workers for reference.

Article 8 When an employing unit recruits a worker, it shall truthfully inform him of the job description, the working conditions, the place of work, occupational hazards, conditions for work safety, labor remuneration and other matters which the worker requests to be informed of. The

employing unit has the right to acquire the basic information of the worker which is directly related to the labor contract, and the worker shall truthfully provide the same.

Article 9 When recruiting a worker, the employing unit may not detain the worker's resident identity card or other certificates, nor may it require him to provide guaranty or collect money or things of value from him in other names.

Article 10 To establish a labor relationship, a written labor contract shall be concluded.

In the event that no written labor contract is concluded at the time when a labor relationship is established, such a contract shall be concluded within one month as of the date when the employing unit employs a worker.

Where an employing unit and a worker conclude a labor contract before the latter starts to work, the labor relationship shall be established as of the date when the latter starts to work.

Article 11 In the event that an employing unit fails to conclude a written labor contract with a worker at the same time as it employs him, and labor remuneration agreed upon with him is not definite, the remuneration shall be decided on according to the rate specified in the collective contract; where there is no collective contract or the collective contract is silent on the matter, equal pay for equal work shall be practiced.

Article 12 Labor contracts consist of fixed-term labor contracts, open-ended labor contracts and labor contracts that expire upon completion of given jobs.

Article 13 A fixed-term labor contract is one the ending date of which is agreed upon between the employing unit and the worker.

An employing unit and a worker may conclude a fixed-term labor contract upon reaching consensus through consultation.

Article 14 An open-ended labor contract is one where the employing unit and the worker have agreed not to stipulate a definite ending date.

An employing unit and a worker may conclude an open-ended labor contract upon reaching consensus through consultation. If a worker proposes or agrees to renew the labor contract or to conclude a labor contract in any of the following circumstances, an open-ended labor contract shall be concluded, unless the worker requests the conclusion of a fixed-term labor contract:

(1) The worker has been working for the employing unit for a consecutive period of 10 or more years;

(2) The worker has been working for the employing unit for a consecutive period of 10 or more years but less than 10 years away from the statutory retirement age when the employing unit introduces the labor contract system or when the State-owned enterprise has to conclude a new labor contract with him as a result of restructuring; or

(3) The worker intends to renew the labor contract after he has consecutively concluded a fixed-term labor contract with the employing unit twice and he has not been found in any of the circumstances specified in Article 39 or Subparagraph (1) or (2) in Article 40 of this Law.

If an employing unit fails to conclude a written labor contract with a worker within one year as of the date when it employs the worker, it shall be deemed to have concluded an open-ended labor contract with the latter.

Article 15 A labor contract that expires upon completion of a given job is one in which the employing unit and the worker have agreed that the period for completion of the given job is the term of the contract.

An employing unit and a worker may, upon reaching consensus through consultation, conclude a labor contract which expires upon completion of a given job.

Article 16 A labor contract shall become effective when the employing unit and the worker reach agreement through consultation thereon and both parties sign or affix their seals on the copies of the contract.

The employing unit and the worker shall each keep a copy of the labor contract.

Article 17 A labor contract shall contain the following terms:

- (1) name, domicile and legal representative or the principal leading person of the employing unit;
- (2) name, address and the number of the resident identity card or of other valid identity documents of the worker;
- (3) term of the labor contract;
- (4) job description and the place of work;
- (5) working hours, rest and vacation;
- (6) labor remuneration;
- (7) social insurance;
- (8) occupational protection, working conditions and protection against occupational hazards; and
- (9) other terms which are required to be included in a labor contract, as provided for by laws and regulations.

In addition to the requisite terms mentioned above, an employing unit and a worker may agree to have other matters stipulated in the labor contract, such as probation period, training, confidentiality, supplementary insurance and welfare benefits.

Article 18 If a dispute arises because the labor remuneration rate, the standard for working conditions, etc. are not definitely specified in the labor contract, the employing unit and the worker may negotiate anew. If the negotiation is unsuccessful, the relevant stipulations of the collective

contract shall be applicable. If there is no collective contract or the collective contract is silent on the issue of labor remuneration, equal pay for equal work shall be practiced. If there is no collective contract or the collective contract is silent on the standards for working conditions, etc., the relevant regulations of the State shall apply.

Article 19 If the term of a labor contract is more than three months but less than one year, the probation period may not exceed one month; if the term is more than one year but less than three years, the probation period may not exceed two months; and if the term is fixed for three or more years or is open-ended, the probation period may not exceed six months.

An employing unit and a worker may agree upon only one probation period.

No probation period may be stipulated in a labor contract that expires upon completion of a given job or in a labor contract for a term of less than three months.

The probation period shall be included in the term of a labor contract. If a labor contract only provides for a probation period, that period shall not stand and the term provided for shall be the term of the labor contract.

Article 20 The wage of a worker on probation shall not be lower than the lowest wage level for the same job of the employing unit or be less than 80 per cent of the wage agreed upon in the labor contract, and shall not be lower than the minimum wage rate in the place where the employing unit is located.

Article 21 An employing unit may not revoke a labor contract during the probation period unless the worker is found in one of the circumstances specified in Article 39 or Subparagraph (1) or (2) in Article 40 of this Law. If an employing unit revokes a labor contract during the probation period, it shall explain the reasons to the worker.

Article 22 If an employing unit provides special funding for a worker's training and gives him professional technical training, it may conclude an agreement with the worker specifying the term of service.

If the worker breaches the agreement on the term of service, he shall pay a penalty to the employing unit as agreed upon. The sum of the penalty may not exceed the training expenses paid by the employing unit. The penalty that the employing unit requires the worker to pay may not exceed the portion of the training expenses allocable to the unperformed portion of the term of service.

Where the employing unit and the worker reach an agreement on the term of service, the raise in the worker's remuneration according to the regular wage adjustment mechanism during the term of service shall not be adversely affected.

Article 23 An employing unit and a worker may have such terms stipulated in the labor contract as keeping business secrets of the employing unit and keeping confidential the matters relating to its intellectual property rights.

With regard to a worker who has a confidentiality obligation, the employing unit may have stipulated in the labor contract or confidentiality agreement competition restriction and payment of financial compensation to him on a monthly basis during the term of the competition restriction after the labor contract is revoked or terminated. If the worker breaches the stipulation on competition restriction, he shall pay penalty to the employing unit as agreed upon.

Article 24 The persons subject to competition restriction shall be limited to senior managers, senior technicians and other persons who are under the confidentiality obligation to the employing unit. The scope, geographic area and term of competition restriction shall be agreed upon by the employing unit and the worker, and such agreement shall not be at variance with the provisions of laws and regulations.

The term of competition restriction, calculated from the revocation or termination of the labor contract, for one of the persons, as mentioned in the preceding paragraph, to go to work for a competing employing unit that produces or deals in the same type of products or is engaged in the same type of business as his original employing unit, or to establish his own business to produce or deal in the same type of products or engage in the same type of business shall not exceed two years.

Article 25 With the exception of the circumstances specified in Articles 22 and 23 of this Law, an employing unit shall not enter into an agreement with a worker on payment of penalty by the worker for breach of contract.

Article 26 A labor contract shall be invalid or partially invalid under one of the following circumstances:

- (1) The labor contract is concluded or modified against a party's true intention by means of deception or coercion, or when the party is in precarious situations;
- (2) The employing unit disclaims its statutory responsibility or denies the worker his rights; or
- (3) The labor contract is at variance with the mandatory provisions of laws or administrative regulations.

If a dispute arises over the invalidity or partial invalidity of a labor contract, the matter shall be determined by a labor dispute arbitration institution or a people's court.

Article 27 If part of a labor contract is invalid, which does not affect the validity of the rest of the contract, the rest shall remain valid.

Article 28 If a labor contract is determined to be invalid but the worker has performed it, the employing unit shall pay the worker remuneration. The amount of remuneration shall be determined mutatis mutandis according to that for the workers holding the same or similar posts in the employing unit.

### Chapter III Performance and Modification of a Labor Contract

Article 29 An employing unit and a worker shall fully perform their respective obligations in accordance with the labor contract.

Article 30 The employing unit shall pay their workers remuneration on time and in full in accordance with the labor contract and the regulations of the State.

If an employing unit defaults in payment or underpays the labor remuneration, the worker concerned may, in accordance with law, apply to the local people's court for an order for payment, and the people's court shall issue such an order in accordance with law.

Article 31 The employing unit shall strictly implement the norm set for labor quota and shall not compel the workers to work overtime or do so in disguised form. If an employing unit arranges for a worker to work overtime, it shall give him overtime pay in accordance with the relevant regulations of the State.

Article 32 A worker shall not be deemed to be breaching the labor contract if he refuses to perform hazardous operations under instructions given in violation of rules and regulations or peremptorily given by a manager of the employing unit.

A worker shall have the right to criticize or report or lodge accusations against the employing unit in respect of the working conditions that endanger his life or health.

Article 33 Where an employing unit alters its name, replaces its legal representative, the principal leading person or investor(s), etc., performance of the labor contract shall not be affected.

Article 34 Where an employing unit is merged, divided, etc., the existing labor contract shall remain valid and continue to be performed by the employing unit which succeeds to its rights and obligations.

Article 35 An employing unit and a worker may modify the provisions of the labor contract, if they reach consensus on the matter through consultation. Modification of a labor contract shall be made in writing.

The employing unit and the worker shall each keep a copy of the modified labor contract.

#### Chapter IV Revocation and Termination of a Labor Contract

Article 36 An employing unit and a worker may revoke the labor contract if they reach consensus on the matter through consultation.

Article 37 A worker may have the labor contract revoked by giving a written notification to the employing unit 30 days in advance. During the probation period, a worker may have the labor contract revoked by notifying the employing unit of his intention three days in advance.



Article 38 A worker may have the labor contract revoked if the employing unit is found in any of the following circumstances:

- (1) failing to provide occupational protection or working conditions as agreed upon in the labor contract;
- (2) failing to pay labor remuneration on time and in full;
- (3) failing to pay the social insurance premiums for the worker in accordance with law;
- (4) having rules and regulations that are at variance with laws or regulations, thereby impairing the worker's rights and interests;
- (5) invalidating the labor contract as a result of one of the circumstances specified in the first paragraph of Article 26 of this Law; or
- (6) other circumstances in which a worker may have the labor contract revoked as provided for by laws or administrative regulations.

If an employing unit forces a person to work by resorting to violence, intimidation or illegal restriction of personal freedom, or if it gives instructions in violation of rules and regulations or gives peremptory orders to the worker to perform hazardous operations, which endanger his personal safety, the latter may revoke the labor contract forthwith without notifying the employing unit of the matter in advance.

Article 39 The employing unit may have the labor contract revoked if a worker is found in any of the following circumstances:

- (1) being proved unqualified for recruitment during the probation period;
- (2) seriously violating the rules and regulations of the employing unit;
- (3) causing major losses to the employing unit due to serious dereliction of duty or engagement in malpractices for personal gain;
- (4) concurrently establishing a labor relationship with another employing unit, which seriously affects the accomplishment of the task of the original employing unit, or refusing to rectify after the original employing unit brings the matter to his attention;
- (5) invalidating the labor contract as a result of the circumstance specified in Subparagraph (1) of the first paragraph of Article 26 of this Law; or
- (6) being investigated for criminal responsibility in accordance with law.

Article 40 In one of the following circumstances, an employing unit may revoke the labor contract, if it notifies in writing the worker of its intention 30 days in advance or after paying him an extra one month salary:

- (1) The worker is unable to take up his original work or any other work arranged by the employing unit on the expiration of the specified period of medical treatment for illness or for injury incurred when not at work;
- (2) The worker is incompetent for the post and remains incompetent after receiving a training or being assigned to another post; or
- (3) The objective conditions taken as the basis for conclusion of the contract have greatly changed, so that the original labor contract cannot be performed and, after consultation between the employing unit and the worker, no agreement is reached on modification of the contents of the labor contract.

Article 41 If, in any of the following circumstances, an employing unit needs to cut employment by more than 20 persons, or by less than 20 persons, which, however, accounts for more than 10 per cent of the total number of the enterprise's employees, it may do so after it explains the situation to the trade union or all of its employees 30 days in advance, solicits opinions from among them and submit its plan for cutting employment to the administrative department of labor:

- (1) The enterprise is to undergo reorganization pursuant to the provisions of the Law on Enterprise Bankruptcy;
- (2) The enterprise is in dire straits in production and management;
- (3) The enterprise changes its line of production, introduces a major technological updating or adjusts its business method, and, after modification of the labor contracts, still needs to reduce its personnel; or
- (4) The objective economic conditions taken as the basis for conclusion of the labor contracts have greatly changed, so that the original labor contracts cannot be performed.

When cutting employment, the employing unit shall continue to employ the following persons by giving priority to them:

- (1) persons who have concluded fixed-term labor contracts for a relatively long term with the employing unit;
- (2) persons who have concluded open-ended labor contracts with the employing unit; and
- (3) persons none of whose other family members has a job or who have an elder or minor depending on his support.

If an employing unit that has cut its employment pursuant to the provisions in the first paragraph of this Article goes to recruit employees anew within six months, it shall give notification to the laid off persons and, under equal conditions, recruit them before others.

Article 42 The employing unit may not revoke the labor contract concluded with the worker, who is under one of the following circumstances, by applying the provisions in Articles 40 and 41 of this Law:

- (1) Being engaged in operations exposed to occupational disease hazards, the worker is not given pre-departure occupational health examinations, or being suspected of an occupational disease, is in the process of being diagnosed or is under medical observation;
- (2) Having contracted an occupational disease or being injured at work, the work is confirmed to have totally or partially lost the ability to work;
- (3) The worker is in the prescribed period of medical treatment for illness, or for injury incurred when not at work, and;
- (4) The worker is during the pregnant, puerperal or breast-feeding stage;
- (5) The worker has been working for the employing unit continuously for 15 years in full and is less than 5 years away from the statutory retirement age; or
- (6) The worker is in any other circumstances as provided for by laws or administrative regulations.

Article 43 Where an employing unit intends to revoke a labor contract unilaterally, it shall notify the trade union of the reasons in advance. If the employing unit violates the provisions of laws or administrative regulations or the labor contracts, the trade union shall have the right to demand that the employing unit put it right. The employing unit shall consider the trade union's opinion and notify the trade union in writing of the settlement of the matter.

Article 44 A labor contract shall be terminated under one of the following circumstances:

- (1) The term of the contract expires;
- (2) The worker concerned begins to enjoy the benefits of the basic old-age insurance pension in accordance with law;
- (3) The worker concerned dies, or is declared dead or missing by the people's court;
- (4) The employing unit is declared bankrupt in accordance with law;
- (5) The business license of the employing unit is revoked, the employing unit is ordered to close down or to dissolve, or it decides to dissolve on an earlier date; or
- (6) any other circumstances provided for by laws and administrative regulations.

Article 45 At the expiration of a labor contract, under one of the circumstances prescribed in Article 42 of this Law, the term of the labor contract shall be extended until the necessary conditions cease to exist. However, the termination of a labor contract with a worker who has totally or partially lost the ability to work, as specified in Subparagraph (2) of Article 42 of this Law shall be handled in accordance with the regulations of the State governing insurance for work-related injury.

Article 46 The employing unit shall pay financial compensation to a worker under one of the following circumstances:

- (1) The worker revokes the labor contract pursuant to the provisions in Article 38 of this Law;

- (2) The employing unit proposes revocation of the labor contract to the worker pursuant to the provisions in Article 36 of this Law and the parties reach an agreement thereon through consultation;
- (3) The employing unit revokes the labor contract pursuant to the provisions in Article 40 of this Law;
- (4) The employing unit revokes the labor contract pursuant to the provisions in the first paragraph of Article 41 of this Law;
- (5) The fixed-term labor contract is terminated pursuant to the provisions in Subparagraph (1) of Article 44 of this Law, except that the worker does not agree to renew the contract even though the employing unit maintains the same conditions as, or offers better conditions than, the ones stipulated in the previous contract;
- (6) The labor contract is terminated pursuant to the provisions of Subparagraph (4) or (5) of Article 44 of this Law; or
- (7) Under any other circumstances provided for by laws or administrative regulations.

Article 47 Financial compensation shall be paid on the basis of the number of years a person works in a unit, the rate being one month's salary for the work of one full year. If he has worked for six months or more but less than one year, the time shall be calculated as one year; and if he has worked for less than six months, he shall be paid half of his monthly salary as financial compensation.

If the monthly salary of a worker is three times the average monthly salary of the workers of the region for the previous year, which is published by the people's government of the municipality directly under the Central Government or by that of the city divided into districts where the employing unit is located, the rate for his financial compensation payable shall be three times the average monthly salary of the workers, and the number of years involved shall not exceed 12 years.

For the purposes of this Article, the monthly salary means the average of a given worker's monthly salary for the 12 months prior to the revocation or termination of the labor contract.

Article 48 Where an employing unit revokes or terminates a labor contract in violation of the provisions of this Law and the worker involved demands continued performance of the contract, the employing unit shall continue performing the same. If the worker does not demand so or if it becomes impossible for continued performance of the labor contract, the employing unit shall pay compensation pursuant to the provisions in Article 87 of this Law.

Article 49 The State takes measures to establish and improve an inter-regional system to ensure that a worker's social insurance account is continued when he is transferred to another region.

Article 50 An employing unit shall issue a certificate of revocation or termination of the labor contract at the time of its revocation or termination and shall, within 15 days, undergo the formalities for the transfer of the worker's personal file and social insurance account.

The worker shall hand over the matters related to his work as agreed upon by both parties. If the employing unit needs to pay financial compensation to the worker according to the relevant provisions of this Law, it shall make such payment upon completion of the procedure for handover of the work-related matters.

The employing unit shall keep the copy of a revoked or terminated labor contract for at least two years for reference.

## Chapter V Special Provisions

### Section 1 A Collective Contract

Article 51 The employees of an enterprise as one party and the employing unit as the another may, through negotiation on an equal basis, conclude a collective contract on matters relating to labor remuneration, working hours, rest and vocation, occupational safety and health, insurance, welfare benefits, etc. The draft collective contract shall be submitted to the worker's congress or to all the employees for discussion and adoption.

A collective contract shall be concluded by the trade union on behalf of the employees of the enterprise with the employing unit. In an enterprise where a trade union has not yet been set up, such a contract shall be concluded with the employing unit by the representatives elected by the workers under the guidance of the trade union at a higher level.

Article 52 The employees of an enterprise as one party may conclude special collective contracts with the employing unit in respect of occupational safety and health, protection of the rights and interests of female employees, wage adjustment mechanism, etc.

Article 53 In regions at or below the county level, industry-wide or region-wide collective contracts may be concluded between the trade unions and the representatives of the enterprises engaging in such industries as construction, mining and catering service.

Article 54 After conclusion, a collective contract shall be submitted to the administrative department of labor and it shall become valid if the department raises no objection within 15 days from the date it receives the text of the labor contract.

A collective contract concluded in accordance with law is binding on the employing unit and the workers. An industry-wide or region-wide collective contract is binding on the employing units and the workers engaged in a given local industry or a given region.

Article 55 The rates for labor remuneration and the standards for working conditions, etc. stipulated in a collective contract shall not be lower than the minimum rates and standards prescribed by the local People's government. The rates for labor remuneration and standards for working conditions, etc. stipulated in the labor contract between an employing unit and a worker shall not be lower than those stipulated in the collective contract.

Article 56 Where an employing unit breaches the collective contract and infringes upon the labor rights and interests of the workers, the trade union concerned may, in accordance with law, demand that the employing unit assume liability. If a dispute arise over the performance of the collective contract and cannot be resolved through consultation, the trade union may apply for arbitration or bring a lawsuit in accordance with law.

## Section 2 Labor Dispatch

Article 57 A labor-dispatching unit shall be established in accordance with the relevant provisions in the Companies Law, and its registered capital shall be not less than RMB 500,000 yuan.

Article 58 For the purposes of this Law, a labor-dispatching unit is an employing unit which performs the obligation of an employing unit to the workers. In the labor contract concluded between the labor-dispatching unit and the workers to be dispatched shall, in addition to the terms specified in Article 17 of this Law, be specified such terms as the units to which the workers are to be dispatched, the period of dispatch and the specific jobs.

The labor-dispatching unit shall conclude with the workers to be dispatched a fixed-term labor contract for a period of not less than two years and shall pay labor remuneration on a monthly basis. During the intervals when there is no work to do, the labor-dispatching unit shall pay labor remuneration on a monthly basis at the minimum wage rate prescribed by the people's government of the place where the workers are working.

Article 59 When dispatching workers, the labor-dispatching unit shall conclude an agreement on labor dispatch with the unit that receives the workers under the dispatch arrangement ( hereinafter referred to as the receiving unit). In the agreement on labor dispatch shall be stipulated the jobs dispatched to, the number of persons, the period for dispatch, the amounts and methods of payment of labor remuneration and social insurance premiums, and the liability for breach of the agreement.

An receiving unit shall decide with the labor-dispatching unit on the period of dispatch based on the actual need for jobs and shall not divide a continuous period of employment in order to conclude a number of short-term agreements.

Article 60 The labor-dispatching unit shall inform the workers to be dispatched of the content of the agreement on labor dispatch.

The labor-dispatching unit shall not pocket the labor remuneration that the receiving unit pays to the workers in accordance with the agreement on labor dispatch.

The labor-dispatching unit and the receiving unit may not charge any fees from the workers dispatched.

Article 61 If a labor-dispatching unit dispatches workers to a receiving unit located in another place, the labor remuneration and working conditions to be enjoyed by the workers dispatched shall be provided in conformity with the rates and standards of the place where the receiving unit is located.

Article 62 The receiving unit shall perform the following obligations:

- (1) to apply the labor standards of the State and provide the necessary working conditions and occupational protection;
- (2) to inform the dispatched workers of the job requirements and labor remuneration;
- (3) to give overtime pay and performance bonuses and provide welfare benefits related to specific posts;
- (4) to provide the dispatched workers training that is necessitated by the job they are on; and
- (5) to apply a regular wage adjustment mechanism in case of continued employment.

The receiving unit may not re-dispatch the workers to another employing units.

Article 63 Dispatched workers shall enjoy the right of equal pay for equal work as the workers of the receiving unit do. If a receiving unit has no workers holding the same kind of posts, labor remuneration shall be determined in light of that paid to the workers holding the same or similar posts at the place where the receiving unit is located.

Article 64 The dispatched workers shall have the right, in accordance with law, to join the trade union of the labor-dispatching unit or the receiving unit or to organize a trade union, in order to protect their own legitimate rights and interests.

Article 65 Dispatched workers may have their labor contracts with the labor-dispatching unit revoked pursuant to the provisions in Article 36 or 38 of this Law.

If a dispatched worker is in any of the circumstances specified in Article 39 and Subparagraph (1) or (2) of Article 40 of this Law, the receiving unit may send him back to the labor-dispatching unit, which may have the labor contract with him revoked in accordance with the relevant provisions of this Law.

Article 66 Workers are dispatched generally for temporary, auxiliary or substitute jobs.

Article 67 No employing unit may establish labor-dispatching units to dispatch workers to its own unit or to its subordinate units.

### Section 3 Part-Time Employment

Article 68 Part-time employment is a form of employment under which remuneration is chiefly calculated by the hour and the workers generally work for not more than 4 hours per day in average and not more than an aggregate of 24 hours per week for the same employing unit.

Article 69 The two parties to part-time employment may conclude an oral agreement.

A worker in part-time employment may conclude a labor contract with one or more employing units; however, the labor contract concluded later may not prejudice the performance of the one concluded earlier.

Article 70 The two parties to part-time employment may not conclude an agreement on probation period.

Article 71 Either of the two parties to part-time employment may give a notice to the other party at any time to terminate the employment, and in such a case the employing unit shall not pay any financial compensation.

Article 72 The hourly remuneration rate for part-time employment may not be lower than the minimum hourly wage rate specified by the people's government of the place where the employing unit is located.

Labor remuneration settlement and payment cycle for part-time employment may not exceed 15 days.

## Chapter VI Supervision and Inspection

Article 73 The administrative department of labor under the State Council shall be in charge of supervision over and administration of the implementation of the labor contract system nationwide.

The administrative departments of labor of the local people's governments at or above the county level shall be in charge of supervision over and administration of the implementation of the labor contract system in their own administrative areas.

In supervising and administering the implementation of the labor contract system, the administrative departments of labor of the local people's governments at or above the county level shall listen to the opinions of the trade unions, the enterprise representatives and the departments in charge of the specific industries.

Article 74 The administrative departments of labor of the local people's governments at or above the county level shall, in accordance with law, supervise and inspect the implementation of the labor contract system in respect of the following matters:

- (1) the rules and regulations formulated by the employing units that have a direct bearing on the immediate interests of the workers, and the implementation of such rules and regulations;
- (2) conclusion of labor contracts between employing units and workers and their revocation;
- (3) compliance with the relevant regulations on labor dispatch by the labor-dispatching units and the receiving units;
- (4) compliance by the employing units with the State regulations on working hours, rest and vocation of workers;
- (5) payment by the employing units of labor remuneration as stipulated in the labor contracts, and their compliance with the minimum wage standards;



(6) purchase of the various types of social insurance by the employing units for the workers, and payment of social insurance premiums by the same; and

(7) other matters subject to supervision and inspection concerning labor as specified in laws and regulations.

Article 75 When the administrative department of labor of a local people's government at or above the county level conducts supervision and inspection, it shall have the right to check the materials relating to labor contracts and collective contracts and to conduct on-the-spot inspection of the workplaces, and both the employing units and the workers shall truthfully provide relevant information and materials.

When staff members of an administrative department of labor conduct supervision and inspection, they shall produce their papers, exercise their duties and powers according to law and enforce the law in a polite manner.

Article 76 The departments in charge of supervision over and administration of construction, health, work safety, etc. under the people's governments at or above the county level shall, within the limits of their respective duties, supervise and administer the implementation of the labor contract system by the employing units.

Article 77 A worker whose legitimate rights and interests are infringed upon shall have the right to request the relevant department to deal with such infringement according to law, or to apply for arbitration or bring a lawsuit according to law.

Article 78 The trade unions shall protect the legitimate rights and interests of the workers in accordance with law and supervise the performance of labor contracts and collective contracts by the employing units. Where an employing unit violates the labor laws or regulations or breaches a labor contract or a collective contract, the trade union concerned shall have the right to put forward its opinions or request rectification. Where a worker applies for arbitration or brings a lawsuit, the trade union concerned shall provide him with support and assistance in accordance with law.

Article 79 All organizations and individuals shall have the right to inform against violations of this Law, and the administrative departments of labor of the people's governments at or above the county level shall verify and deal with such violations in a timely manner and reward the ones that perform meritorious service.

## Chapter VII Legal Responsibility

Article 80 Where the rules and regulations of an employing unit that have a direct bearing on the immediate interests of workers are in contravention with the provisions of laws and regulations, the administrative department of labor shall order it to rectify and shall give it a warning. If harm is done to a worker, the employing unit shall be liable for compensation.

Article 81 Where the requisite terms provided for by this Law are not clearly stated in the text of a labor contract provided by an employing unit or an employing unit fails to deliver a copy of the labor contract to the worker, the administrative department of labor shall order it to rectify. If harm is done to the worker, the unit shall be liable for compensation.

Article 82 Where an employing unit fails to conclude a written labor contract with a worker for more than a month but less than a year from the date it starts employing him, it shall pay the worker two times his salary for each month.

Where an employing unit fails to conclude an open-ended labor contract with a worker in violation of the provisions of this Law, it shall pay the worker two times his salary for each month, starting from the date on which an open-ended labor contract should be concluded.

Article 83 Where in violation of the provisions of this Law, an employing unit reaches an agreement with a worker on a probation period, the administrative department of labor shall order it to rectify. If the illegal agreement on a probation period is executed, the employing unit shall pay compensation to the worker at the rate of the worker's monthly salary following the completion of his probation, for the period of performance by the worker in excess of the statutory probation period.

Article 84 Where an employing unit, in violation of the provisions of this Law, detains a worker's resident identity card or other certificates, the administrative department of labor shall order it to return the same to the worker within a time limit and impose on it a penalty in accordance with the provisions of relevant laws.

Where an employing unit, in violation of the provisions of this Law, collect money or things of value from the workers in the name of guaranty or in other names, the administrative department of labor shall order it to return the same to the workers within a time limit and impose on it a fine at the rate of not less than 500 yuan but not more than 2,000 yuan for each person from whom it has collected money or things of value; if harm is done to the workers, it shall be liable for compensation.

Where an employing unit detains a worker's personal file or other articles when the worker has his labor contract revoked or terminated in accordance with law, it shall be penalized in accordance with the provisions in the preceding paragraph.

Article 85 Where an employing unit commits one of the following acts, the administrative department of labor shall order it to pay the labor remuneration, give overtime pay or make other financial compensation within a time limit; if the labor remuneration is lower than the local minimum wage rate, it shall pay the difference. If it fails to make such payment at the expiration of the time limit, it shall be ordered to pay an additional compensation to the worker at a rate of not less than 50 percent but not more than 100 percent of the amount payable:

(1) failing to pay a worker his labor remuneration on time and in full as stipulated in the labor contract or as prescribed by the State;

(2) paying labor remuneration at a rate below the local minimum wage rate;

(3) arranging overtime work but giving no overtime pay; or

(4) failing to pay the worker financial compensation pursuant to the provisions of this Law when revoking or terminating a labor contract.

Article 86 Where a labor contract is determined to be invalid in accordance with the provisions of Article 26 of this Law, which causes harm to the other party, the party in default shall be liable for compensation.

Article 87 Where an employing unit revokes or terminates a labor contract in violation of the provisions of this Law, it shall pay compensation to the worker two times the rate of financial compensation specified in Article 47 of this Law.

Article 88 Where an employing unit commits one of the following acts, it shall be subjected to an administrative sanction in accordance with law; if a criminal is constituted, it shall be investigated for criminal responsibility according to law; if harm is done to a worker, the employing unit shall be liable for compensation:

(1) forcing a person to work by resorting to violence, intimidation or illegal restriction of personal freedom;

(2) giving instructions in violation of rules and regulations or giving peremptory orders to a worker to perform hazardous operations, which endanger his personal safety;

(3) humiliating, giving corporal punishment to, beating, illegally searching or detaining a worker; or

(4) providing a worker with hazardous working conditions or a severely polluted environment, thus causing serious harm to the physical or mental health of the worker.

Article 89 Where in violation of the provisions of this Law, an employing unit fails to issue to a worker a written statement proving the revocation or termination of the labor contract, the administrative department of labor shall order it to rectify. If harm is caused to the worker, the unit shall be liable for compensation.

Article 90 Where a worker revokes the labor contract in violation of the provisions of this Law or breaches the confidentiality obligation or competition restriction stipulated in the labor contract, thus causing losses to the employing unit, he shall be liable for compensation.

Article 91 Where an employing unit recruits a worker whose labor contract with another employing unit has not yet been revoked or terminated, and thus causing losses to the other employing unit, it shall bear joint and several liability for compensation.

Article 92 Where a labor-dispatching unit violates the provisions of this Law, the administrative department of labor and other competent departments concerned shall order it to rectify. If the circumstances are serious, a fine shall be imposed on it, with not less than 1,000 yuan but not more than 5,000 yuan for each person, and its business license shall be revoked by the administrative department for industry and commerce. If harm is caused to the dispatched workers, the labor-dispatching unit and the labor-receiving unit shall bear joint and several liability for compensation.

Article 93 An employing unit without the lawful business qualifications shall, in accordance with law, be investigated for legal responsibility for its illegal or criminal acts. If the workers have done their work, the employing unit or its sponsor(s) shall pay them labor remuneration, financial compensation and damages in accordance with the relevant provisions of this Law. If losses are caused to the workers, the unit shall be liable for compensation.

Article 94 Where an individual that contracts for the operation of a business recruits workers in violation of the provisions of this Law, thus causing losses to the workers, the organization giving out the contract and the individual contractor shall bear joint and several liability for compensation.

Article 95 Where an administrative department of labor or another competent department concerned or its staff member neglects its/his duties and fails to perform the statutory duties, or exercises its/his functions and powers in violation of law, thus causing losses to a worker or an employing unit, it /he shall be liable for compensation; the person directly in charge and the other persons directly responsible shall be given administrative sanctions according to law; if a crime is constituted, it/he shall be investigated for criminal responsibility according to law.

## Chapter VIII Supplementary Provisions

Article 96 Where there are stipulations made in other laws or administrative regulations or by the State Council to govern the conclusion, performance, modification, revocation or termination of labor contracts between public institutions and the persons employed by them under the employment system, the provisions there shall prevail; otherwise, the relevant provisions in this Law shall apply.

Article 97 A labor contract which is concluded in accordance with law prior to implementation of this Law and remains valid as of the date this Law goes into effect shall continue to be performed. With respect to the number of times for consecutive conclusion of a fixed-term labor contract, as provided for in Subparagraph (3) of the second paragraph in Article 14 of this Law, it shall begin to be calculated from the time the labor contract is renewed after this Law goes into effect.

Where a labor relationship is established prior to the implementation of this Law but no written labor contract is concluded yet, such a contract shall be concluded within one month from the date this Law goes into effect.

Where a labor contract which remains valid as of the date this Law goes into effect is revoked or terminated thereafter, financial compensation shall be paid pursuant to the provisions of Article 46 of this Law, and the number of years for which financial compensation should be paid shall be calculated from the date this Law goes into effect; where the employing unit should pay financial compensation to the worker concerned according to the relevant regulations at the time before this Law goes into effect, it shall do so in accordance with the relevant provisions then.

Article 98 This Law shall go into effect as of January 1, 2008.



# **Law of the People's Republic of China on Labor-dispute Mediation and Arbitration**

Adopted at the 31st Meeting of the Standing Committee of the Tenth National People's Congress on December 29, 2007

## Contents

### Chapter I General Provisions

### Chapter II Mediation

### Chapter III Arbitration

#### Section 1 General Stipulations

#### Section 2 Application and Acceptance

#### Section 3 Hearing and Award

### Chapter IV Supplementary Provisions

### Chapter I General Provisions

Article 1 This Law is enacted in order to resolve labor disputes in an impartial and timely manner, protect the lawful rights and interests of the parties and promote harmonious and stable labor relations.

Article 2 This Law is applicable to the following labor disputes arising between employing units and workers within the territory of the People's Republic of China:

- (1) disputes arising from the confirmation of labor relations;
- (2) disputes arising from the conclusion, performance, alteration, cancellation or termination of labor contracts;
- (3) disputes arising from expulsion, charge, resignation or severance;
- (4) disputes arising from working hours, the period of rest and vacation, social insurance, welfare benefits, training and occupational protection;
- (5) disputes arising from labor remuneration, medical expenses for job-related injury, economic compensation or damages, etc.; and

(6) other labor disputes prescribed by laws and regulations.

Article 3 Labor disputes shall be resolved on the basis of facts and pursuant to the principles of lawfulness, impartiality and timeliness, with stress on mediation, in order to protect the lawful rights and interests of the parties according to law.

Article 4 When a labor dispute arises, the worker concerned may have a consultation with the employing unit or invite the trade union or a third party to join in the consultation with the employing unit, in order to reach a settlement agreement.

Article 5 Where a labor dispute arises and the parties are not willing to have a consultation, or the consultation fails, or the settlement agreement reached is not performed, they may apply to a mediation institution for mediation. Where the parties are not willing to have mediation, or the mediation fails, or the mediation agreement reached is not performed, they may apply to a labor-dispute arbitration commission for arbitration. Where they are dissatisfied with the arbitral award, they may initiate a litigation to a people's court, unless otherwise provided for in this Law.

Article 6 Where a labor dispute arises, the parties have the responsibility to give evidence for their own claims. Where the evidence relevant to the matter under dispute is kept and controlled by the employing unit, the said unit shall provide such evidence. Where the employing unit refuses to do so, it shall bear any unfavorable consequences.

Article 7 Where the party in a labor dispute consists of 10 workers or more, and they have a common request, they may choose one worker to represent them in mediation, arbitration or litigation.

Article 8 The administrative departments of labor of the people's governments at or above the county level shall, in conjunction with the trade unions and representatives of enterprises, establish a tripartite coordination mechanism for labor relations to jointly study and resolve the major issues of labor disputes.

Article 9 Where an employing unit, in violation of State regulations, defaults in the payment of labor remuneration or fails to pay the same in full, or defaults in the payment of medical expenses for job-related injury, economic compensation or damages, the worker concerned may make a complaint to the administrative department of labor, which shall handle the complaint in accordance with law.

## Chapter II Mediation

Article 10 Where a labor dispute arises, the parties may apply for mediation to the following mediation institutions:

(1) labor-dispute mediation commissions of enterprises;

(2) people's mediation institutions at the grass-roots level established in accordance with law; and

(3) organizations with the function of labor-dispute mediation established in towns, townships or neighborhoods.

The labor-dispute mediation commission of an enterprise shall be composed of representatives of employees and of the enterprise. The representatives of employees shall be trade union members or be chosen by all employees, and the representatives of the enterprise shall be designated by the leading person of the enterprise. The director of the labor-dispute mediation commission of the enterprise shall be a trade union member or a person chosen by both parties.

Article 11 The mediators of labor-dispute mediation institutions shall be adult citizens who are fair-minded and upright, maintain ties with people, are devoted to mediation, are familiar with certain laws and policies, and are well-educated.

Article 12 The parties that apply for mediation of a labor dispute may do so in writing or orally. Where an application is made orally, the mediation institution shall, on the spot, note down the basic background of the applicant, the matters under dispute, the reasons for mediation and the time of application.

Article 13 When mediating labor disputes, the mediator shall pay full heed to the facts and reasons stated by both parties, persuade them with patience and help them reach an agreement.

Article 14 Where an agreement is reached after mediation, a mediation agreement shall be prepared.

The mediation agreement shall be signed or sealed by both parties, and be signed by the mediator and sealed by the mediation institution to take effect. It shall be binding on both parties and be performed by them.

Where no mediation agreement is reached within 15 days from the date the labor-dispute mediation institution receives the application for mediation, the parties may apply for arbitration in accordance with law.

Article 15 Where, after the mediation agreement is reached, one of the parties fail to perform the agreement within the time limit prescribed in the agreement, the other party may apply for arbitration in accordance with law.

Article 16 Where a mediation agreement is reached on the payment of labor remuneration, medical expenses for job-related injury, economic compensation or damages in arrears and the employing unit fails to perform the agreement within the time limit prescribed in the agreement, the worker concerned may, on the strength of the mediation agreement, apply to a people's court for a payment order in accordance with law. The people's court shall issue the payment order in accordance with law.

### Chapter III Arbitration



## Section 1 General Stipulations

Article 17 Labor-dispute arbitration commissions shall be set up pursuant to the principles of overall planning, rational geographical distribution and meeting actual needs. The people's governments of provinces and autonomous regions may decide to set up such commissions in cities and counties; and the people's governments of municipalities directly under the Central Government may decide to set up such commissions in districts and counties; in municipalities directly under the Central Government and cities divided into districts, one or more labor-dispute arbitration commissions may also be established. Labor-dispute arbitration commissions shall not be set up level by level according to administrative divisions.

Article 18 The administrative department of labor under the State Council shall formulate arbitration rules in accordance with the relevant provisions of this Law. The administrative departments of labor of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall provide guidance in labor-dispute arbitration within their own administrative areas.

Article 19 A labor-dispute arbitration commissions shall be composed of representatives of the administrative department of labor, the trade unions and the enterprises. The number of the component members of such commission shall be an odd number.

Labor dispute arbitration commissions shall perform the following duties in accordance with law:

- (1) appointing and dismissing full-time or part-time arbitrators;
- (2) accepting and handling labor-dispute cases;
- (3) discussing major or complicated labor-dispute cases; and
- (4) exercising supervision over arbitration.

Labor-dispute arbitration commissions shall set up offices for handling their day-to-day work.

Article 20 A labor dispute arbitration commission shall have a roster of arbitrators.

An arbitrator shall be fair-minded and upright, and meet one of the following requirements:

- (1) having served as a judge;
- (2) being engaged in legal research or teaching with a professional title at the intermediary level or above;
- (3) possessing legal knowledge and having been engaged in human resources management, trade union work or other professional work for five full years; or
- (4) being a lawyer, having been in legal practice for three full years.

Article 21 A labor-dispute arbitration commission shall be responsible for arbitrating labor disputes arising in the district under its jurisdiction.

A labor dispute shall be under the jurisdiction of the labor-dispute arbitration commission at the place where the labor contract concerned is performed or where the employing unit is located. Where one of the two parties applies for arbitration to the labor-dispute arbitration commission at the place where the labor contract is performed and the other does so at the place where the employing unit is located, the labor dispute shall be subject to the jurisdiction of the former.

Article 22 The worker and the employing unit, between whom a labor dispute arises, constitute the two parties to the labor dispute case for arbitration.

Where a labor dispute arises between a labor dispatching unit or an employing unit on the one hand and a worker on the other, the labor dispatching unit and the employing unit constitute a joint party.

Article 23 The third party that has an interest in the result of a labor dispute case to be handled may apply for participating in arbitration or be notified to do so by the labor-dispute arbitration commission.

Article 24 The parties may appoint agents to participate in arbitration. To appoint an agent to participate in arbitration, a letter of attorney signed or sealed by the appointing party shall be submitted to the labor-dispute arbitration commission, in which shall clearly be stated the entrusted matters and the limit of authority.

Article 25 A worker who fully or partially loses the capability of civil conduct shall have his statutory agent participate in arbitration. Where such an agent is lacking, an agent shall be designated for him by the labor-dispute arbitration commission. Where the worker is dead, his close relative or agent shall participate in arbitration.

Article 26 The arbitration of labor disputes shall be conducted openly, unless where the parties agree otherwise, or where State secrets, commercial secrets or personal affairs are involved.

## Section 2 Application and Acceptance

Article 27 The limitation period for application for arbitration of a labor dispute is one year, which shall be calculated from the date a party comes to know or is expected to know the infringement of its rights.

The limitation period for arbitration as prescribed in the preceding paragraph shall be discontinued when one party claims its rights against the other party or requests the relevant department for remedy, or when the other party agrees to perform its obligations. The limitation period for arbitration shall be calculated anew from the time of discontinuance.

Where, due to force majeure or for other justifiable reasons, the party fails to apply for arbitration within the limitation period for arbitration as prescribed in the first paragraph of this Article, the limitation period for arbitration is suspended, calculation of the limitation period for arbitration shall continue from the date the reasons for suspension disappear.

Where, during the existence of the labor relations, a dispute arises over the default in payment of labor remuneration, application for arbitration by the worker concerned shall not be restricted by

the limitation period for arbitration prescribed in the first paragraph of this Article. However, where the labor relations are terminated, such application for arbitration shall be submitted within one year from the date the labor relations are terminated.

Article 28 To applying for arbitration, the applicant shall submit a written application for arbitration and submit duplicates of the application according to the number of the respondents.

In the application for arbitration shall clearly be stated the following matters:

- (1) name, gender, age, occupation, working unit and domicile of the worker, title and domicile of the employing unit, and name and position of the legal representative or the principal leading person;
- (2) the claims for arbitration and the facts and reasons on which the request is based; and
- (3) evidence and the source thereof, and name and domicile of the witness.

Where the applicant has difficulty in writing an application for arbitration, he may make an oral application, which shall be transcribed by the labor-dispute arbitration commission and be made known to the other party.

Article 29 The labor-dispute arbitration commission shall, within five days from the date it receives the arbitration application, accept the application and notify the applicant of its acceptance, if it considers that the application meets the conditions for acceptance; otherwise, it shall notify the applicant in writing that it shall not accept the application and state the reasons. Where the labor-dispute arbitration commission rejects an application or fails to make a decision within the specified time limit, the applicant may initiate a litigation to a people's court with respect to the labor dispute in question.

Article 30 The labor-dispute arbitration commission shall, upon acceptance of an application for arbitration, serve a duplicate of the said application on the respondent within five days.

The respondent shall, upon receipt of the duplicate of the arbitration application, submit a statement of defense to the labor-dispute arbitration commission within 10 days. The labor-dispute arbitration commission shall, within five days after it receives the statement of defense, serve a copy of the statement of defense on the applicant. Failure on the part of the respondent to submit a statement of defense shall not affect the arbitration procedure.

### Section 3 Hearing and Award

Article 31 To make awards of labor-dispute cases, labor-dispute arbitration commissions shall adopt the arbitral tribunal system. The arbitral tribunal shall be composed of three arbitrators, with one serving as chief arbitrator. Simple labor-dispute cases may be arbitrated solely by one arbitrator.

Article 32 The labor-dispute arbitration commission shall, within five days from the date it accepts an application for arbitration, notify the parties in writing of the composition of the arbitral tribunal.

Article 33 An arbitrator shall withdraw, and the parties also have the right to apply orally or in writing for his withdrawal, under one of the following circumstances:

- (1) He is a party to the case in question or a close relative of a party or its agent;
- (2) He has an interest in the case;
- (3) He has other relations with a party to the case or its agent, which may affect impartial award; or
- (4) He meets with a party or its agent without authorization or accepts invitation to dinners or gifts therefrom.

The labor-dispute arbitration commission shall, in a timely manner, make a decision on the application for withdrawal and notify the parties of the decision orally or in writing.

Article 34 Where an arbitrator is under the circumstances prescribed in Subparagraph (4) of Article 33 of this Law, or extorts for or accepts bribes, engages in malpractices for personal gain, or perverts the law in making awards, he shall bear legal liability in accordance with law. The labor-dispute arbitration commission shall dismiss him.

Article 35 The arbitral tribunal shall, five days before the hearing is held, notify both parties to a case of the date and place of the hearing in writing. Where a party has justifiable reasons, it may, three days before the hearing is held, request for postponing the hearing. The decision on whether to postpone the hearing is up to the labor-dispute arbitration commission to make.

Article 36 Where the applicant has received the written notification but fails to be present for the hearing without justifiable reasons or, without approval of the arbitral tribunal, withdraws from the hearing before it is over, it may be deemed to withdraw its arbitration application.

Where the respondent receives the written notification but fails to be present for the hearing without justifiable reasons or, without approval of the arbitral tribunal, withdraws from the hearing before it is over, an award may be rendered by default.

Article 37 Where the arbitral tribunal considers that expert evaluation is needed for issues of a special character, it may hand over such issues to the evaluation institution agreed upon by the parties; where there is no such agreement or the parties cannot reach an agreement, it shall designate an evaluation institution for the purpose.

The evaluation institution shall, at the request of the parties or under demand from the arbitral tribunal, send its experts to participate in the hearing. With permission of the arbitral tribunal, the parties may put questions to the experts.

Article 38 In the course of arbitration, the parties shall have the right to examination and cross-examination and to debate. Upon conclusion of the examinations and cross-examinations and the debates, the chief arbitrator or the sole arbitrator shall solicit the final opinions of the parties.

Article 39 Where the evidence provided by a party is substantiated upon verification, the arbitral tribunal shall make it the basis on which to confirm the facts.

Where a worker cannot provide the evidence, which is kept and controlled by the employing unit and is relevant to his arbitration claim, the arbitral tribunal may require the employing unit to give such evidence within a specified time limit. Where the employing unit fails to do so, it shall bear the unfavorable consequences.

Article 40 The arbitral tribunal shall make a written record of the hearing. Where the parties or the other participants in the arbitration believe that there are omissions or errors in their statements recorded, they shall have the right to apply for supplementation or correction. If the tribunal refuses to make supplementation or correction, the application shall be recorded.

The written record shall be signed or sealed by the arbitrators, recording clerks, the parties and other participants in the arbitration.

Article 41 After applying for arbitration of their labor dispute, the parties may reach a settlement on their own. Where a settlement agreement is reached, the arbitration application may be withdrawn.

Article 42 The arbitral tribunal shall mediate before making an award.

Where an agreement is reached through mediation, a statement of mediation shall be prepared by the arbitral tribunal.

In the statement of mediation shall be stated the arbitration claims and the results agreed upon by the parties. The statement of mediation shall be signed by the arbitrators, sealed by the labor-dispute arbitration commission and served on the parties. The statement of mediation shall take legal effect after acknowledgement by both parties.

Where mediation fails or before the statement of mediation is served, one party goes back on the agreement reached, the arbitral tribunal shall make an award in a timely manner.

Article 43 Where the arbitral tribunal is to make an award of a labor dispute case, it shall finish making the award within 45 days from the date the labor-dispute arbitration commission accepts the arbitration application. If an extension is needed due to the complexity of the case, such extension shall be subject to approval by the director of the labor-dispute arbitration commission, and the parties shall be notified of the extension in writing; however, the period of extension may not exceed 15 days. If no arbitral award is made at the expiration of the time limit, the parties may initiate a litigation to a people's court with respect to the labor dispute.

When making an award of a labor dispute case, in which part of the facts are clear, the arbitral tribunal may make an award first on the basis of the said facts.

Article 44 In respect of the cases involving the recovery of labor remuneration, payment of medical expenses for job-related injury, economic compensation or damages, the arbitral tribunal may, according to the application of the parties, make an award on advance execution and transfer it to the people's court for execution.

For the arbitral tribunal to make an award on advance execution, the following conditions shall be met:

(1) The relationship between both parties in terms of their rights and obligations are clearly defined; and

(2) The living standards of the applicant will seriously be affected, unless advance execution is awarded.

Where a worker applies for advance execution, no guarantee needs to be provided.

Article 45 An award shall be made on the basis of the opinions of the majority of the arbitrators, and the differing opinions held by the minority of the arbitrators shall be recorded. When an opinion of the majority cannot be formed in the arbitral tribunal, an award shall be made on the basis of the opinion of the chief arbitrator.

Article 46 In the award shall clearly be stated the arbitration claim, the facts under dispute, the reasons for award, the results of award and the date of award. The award shall be signed by the arbitrators and sealed by the labor-dispute arbitration commission. The arbitrators holding differing opinions on the award may choose to sign or not to sign it.

Article 47 For the following labor disputes, the arbitral award shall be final and the award shall take legal effect from the date the award is made, unless otherwise provided for in this Law:

(1) disputes involving the recovery of labor remuneration, medical expenses for job-related injury, economic compensation or damages, and the amount involved does not exceed that of the standard local monthly wage rates multiplying 12 months; and

(2) disputes arising over working hours, the period of rest and vacation, and social insurance, etc., in the course of applying the occupational standards of the State.

Article 48 Where a worker is dissatisfied with the arbitral award as prescribed in Article 47 of this Law, he may initiate a litigation to a people's court within 15 days from the date he receives the award.

Article 49 Where an employing unit has evidence to prove that the arbitral award prescribed in Article 47 of this Law falls under one of the following circumstances, it may, within 30 days from the date it receives the award, apply for revocation of the award to an intermediate people's court at the place where the labor-dispute arbitration commission is located:

(1) It is definite that Laws and regulations are applied erroneously;

(2) The labor-dispute arbitration commission has no jurisdiction over the dispute;

(3) The statutory procedure is contravened;

(4) The evidence on which the award is based is forged;

(5) The other party has concealed evidence, which is sufficient to affect an impartial award; or

(6) When arbitrating the case, the arbitrator extorts or accepts bribes, engages in malpractices for personal gain, or perverts the law in making the award.

If the people's court, after forming a collegiate bench, finds upon examination and verification that any of the circumstances as prescribed in the preceding paragraph exists in award-making, it shall revoke the award.

Where the arbitral award is revoked upon decision by the people's court, the parties may, within 15 days from the date they receive the award, initiate a litigation to a people's court with respect to the labor dispute in question.

Article 50 Where a party has objection to the arbitral award of a labor dispute case, other than the ones prescribed in Article 47 of this Law, it may initiate a litigation to a people's court within 15 days from the date it receives the award. If no litigation is initiated at the expiration of the prescribed time limit, the award shall take legal effect.

Article 51 The parties shall, within the prescribed time limit, perform the statement of mediation or the award that takes legal effect. If one party fails to do so at the expiration of the time limit, the other party may, in accordance with the relevant provisions of the Civil Procedure Law, apply to a people's court for execution. The people's court that accepts the application shall execute the statement of mediation or the award in accordance with law.

#### Chapter IV Supplementary Provisions

Article 52 Where a staff member of a public institution, in which the system of appointment is practiced, is involved in a labor dispute with the institution, this Law shall be applicable; if laws and administrative regulations or the regulations of the State Council provide otherwise, the said provisions there shall prevail.

Article 53 Arbitration of labor disputes is free of charge. Funding for labor-dispute arbitration commissions shall be guaranteed by the government.

Article 54 This Law shall go into effect as of May 1, 2008.

# **Law of the People's Republic of China on Penalties for Administration of Public Security**

Adopted at the 17th Meeting of the Standing Committee of the Tenth National People's Congress on August 28, 2005

## Contents

### Chapter I General Provisions

### Chapter II Types of Penalties and Their Application

### Chapter III Acts Against the Administration of Public Security and Penalties

#### Section 1 Acts Disturbing Public Order and Penalties

#### Section 2 Acts Impairing Public Security and Penalties

#### Section 3 Acts Infringing upon Rights of the Person and of Property and Penalties

#### Section 4 Acts Impeding Social Administration and Penalties

### Chapter IV Procedure of Penalties

#### Section 1 Investigation

#### Section 2 Decision

#### Section 3 Execution

### Chapter V Law Enforcement Supervision

### Chapter VI Supplementary Provisions

### Chapter I General Provisions

Article 1 This Law is formulated in order to maintain the order of public security, safeguard public safety, protect the lawful rights and interests of citizens, legal persons and other organizations, and regularize and guarantee performance of the duties for administration of public security by public security organs and people's police according to law.

Article 2 A person who disturbs public order, endangers public safety, infringes on the rights of person and property or hampers social administration, which is harmful to the society and which, according to the provisions of the Criminal Law of the People's Republic of China, constitutes a



crime, shall be investigated for criminal responsibility according to law; and if such an act is not serious enough for criminal punishment, the public security organ shall impose on him a penalty for administration of public security according to this Law.

Article 3 The provisions of this Law are applicable to the procedure of penalties for administration of public security; and to cases for which no such provisions are stipulated in this Law, the relevant provisions of the Law of the People's Republic of China on Administrative Penalty shall be applicable.

Article 4 This Law shall be applicable to acts committed against the administration of public security within the territory of the People's Republic of China, except where specially provided for by other laws.

This Law shall be applicable to acts against the administration of public security committed aboard ships or aircrafts of the People's Republic of China, except where specially provided for by other laws.

Article 5 A penalty for administration of public security shall be based on facts and fit the nature and circumstances of the act committed against the administration of public security and the extent of harm done to the society.

Penalties for administration of public security shall be imposed openly and impartially, human rights shall be respected and safeguarded, and the dignity of citizens shall be protected.

The principle of combining education with penalty shall be upheld in dealing with cases of public security.

Article 6 People's governments at various levels shall make comprehensive improvement of public security and take effective measures to dissolve social contradictions, enhance social harmony and maintain social stability.

Article 7 The department of public security under the State Council shall be responsible for administration of public security throughout the country. The public security organs of the local people's governments at or above the county level shall be responsible for administration of public security within their respective administrative areas.

Jurisdiction over the cases of public security shall be determined by the department of public security under the State Council.

Article 8 Where an act against the administration of public security causes harm to another person, the person committing such act or his guardian shall bear civil liability according to law.

Article 9 In respect of acts against the administration of public security, such as brawling and damaging or destroying another person's property, which are caused by civil disputes, if the circumstances are relatively minor, the public security organ may dispose of them through mediation. Where the parties concerned reach an agreement through mediation by the public security organ, no penalties shall be imposed. Where no agreement is reached through mediation or the agreement, although reached, is not executed, the public security organ shall, in accordance

with the provisions of this Law, impose penalties upon the persons committing the acts against the administration of public security and notify the parties concerned that they may, according to law, bring a civil action before a people's court in respect of the civil disputes.

## Chapter II Types of Penalties and Their Application

Article 10 Penalties for acts against the administration of public security are divided into the following types:

- (1) warning;
- (2) fine;
- (3) administrative detention; and
- (4) revocation of licenses issued by public security organs.

To a foreigner who acts against the administration of public security, leaving the country within a time limit or deportation attached to a penalty may be applicable.

Article 11 Contraband seized in dealing with cases of public security such as drugs and pornographic objects, gambling devices, money for gambling, devices used for ingesting or injecting drugs, and the instruments owned and directly used by the persons in their acts against the administration of public security shall be taken over, and shall be disposed of according to relevant regulations.

The money and things of value obtained through acts against the administration of public security shall be recovered and returned to the victim; and where there is no victim involved, they shall be registered and sold by auction or disposed of according to the relevant regulations of the State, and all the proceeds therefrom shall be handed over to the State Treasury.

Article 12 If a person who has attained to the age of 14 but not to the age of 18 commits an act against the administration of public security, he shall be given a relatively light or mitigated penalty; and if a person who has not attained to the age of 14 commits such an act, he shall not be penalized, but his guardian shall be instructed to subject him to strict discipline.

Article 13 Where a mentally disordered person commits an act against the administration of public security at the time when he is unable to recognize or control his own conduct, he shall not be penalized, but his guardian shall be instructed to keep a strict guard on him and to subject him to medical treatment. Where an intermittently insane person commits an act against the administration of public security while in normal mental condition, he shall be penalized.

Article 14 Where a blind or deaf-mute person commits an act against the administration of public security, he may be given a relatively light or mitigated penalty, or shall not be penalized.

Article 15 Where an intoxicated person commits an act against the administration of public security, he shall be penalized.

Where an intoxicated person in a drunken state may cause danger to himself or threatens another person's personal safety or property or public safety, protective measures shall be taken to restrain him until he sobers up.

Article 16 Where a person commits two or more acts against the administration of public security, decisions shall be made separately but executed concurrently. Where penalties of administrative detention are concurrently executed, the maximum term of such detention shall not exceed 20 days.

Article 17 Where an act is committed jointly against the administration of public security, the persons committing such act shall be penalized separately, depending on the role played by each of them in the act.

Where a person instigates or coerces another person to act against the administration of public security, or lures the person into such act, he shall be penalized according to the seriousness of the act committed as a result of his instigation, coercion or luring.

Article 18 Where a unit commits an act against the administration of public security, the persons directly in charge and the other persons directly responsible shall be penalized in accordance with the provisions of this Law. Where other laws or administrative regulations provide that penalty shall be imposed on a unit for the same act, the unit shall be penalized in accordance with the provisions there.

Article 19 The penalty to be imposed on a person who commits an act against the administration of public security shall be mitigated, or no penalty shall be imposed on him, under one of the following circumstances:

- (1) The adverse effects are extremely minor;
- (2) The person takes the initiative to remove or lessen the adverse effects, and gains the victim's forgiveness;
- (3) The act is committed under the coercion or luring by another person;
- (4) The person surrenders himself to the police and truthfully states his illegal act to the public security organ; or
- (5) The person has performed meritorious service.

Article 20 Under one of the following circumstances, a heavier penalty shall be imposed on a person who commits an act against the administration of public security:

- (1) The adverse effects relatively serious;
- (2) The person instigates or coerces another person to commit an act against the administration of public security, or lures the person into such act;
- (3) The person retaliates against the reporter, accuser, informant or witness; or

(4) The person has been subjected to penalty for his act against the administration of public security within the past six months.

Article 21 Under one of the following circumstances, the penalty of administrative detention shall not be executed against the person who has committed an act against the administration of public security, although such a penalty should be imposed on him/ her according to the provisions of this Law:

- (1) The person has attained to the age of 14 but not to the age of 16;
- (2) The person has attained to the age of 16 but not to the age of 18, and such act is committed for the first time;
- (3) The person is over 70 years old; or
- (4) The person is pregnant or breast-feeds her own baby who is not one year old.

Article 22 Where an act committed against the administration of public security is not discovered by the public security organ within six months, the person committing such act shall no longer be penalized.

The period of time specified in the preceding paragraph shall be counted from the date the act is committed against the administration of public security; and if such act is continual or continuing, the period of time shall be counted from the date the act ends.

### Chapter III Acts Against the Administration of Public Security and Penalties Section 1 Acts Disturbing Public Order and Penalties

Article 23 A person who commits one of the following acts shall be given a warning or be fined not more than RMB 200 yuan; and if the circumstances are relatively serious, he shall be detained for not less than 5 days but not more than 10 days and may, in addition, be fined not more than 500 yuan:

- (1) disturbing the order of government departments, public organizations, enterprises or institutions, thus making it impossible for work, production, business operation, medical care, teaching or scientific research to go on normally but not having caused serious losses;
- (2) disturbing the public order at stations, ports, wharves, airports, department stores, parks, exhibition halls or other public places;
- (3) disturbing the public order on board of buses, trolleybuses, trains, ships, aircrafts and other means of public transportation;
- (4) illegally intercepting or forcibly boarding or holding on to motor vehicles, ships, aircrafts and other means of public transportation, thus hampering the normal operation of the means of public transportation; or

(5) disrupting the order of elections conducted according to law.

Where the acts mentioned in the preceding paragraphs are committed by a crowd, the ringleader shall be detained for not less than 10 days but not more than 15 days and may, in addition, be fined not more than 1,000 yuan.

Article 24 A person who commits one of the following acts, thus disturbing the order of such large-scale activities of a mass character as cultural and sports activities, shall be given a warning or be fined not more than 200 yuan; and if the circumstances are serious, he shall be detained for not less than 5 days but not more than 10 days and may, in addition, be fined not more than 500 yuan:

- (1) forcibly entering the arena;
- (2) setting off fireworks, firecrackers or other articles in the arena in violation of regulations;
- (3) displaying such articles as humiliating slogans and streamers;
- (4) joining with other persons in attacking a referee, player or any other worker;
- (5) throwing odds and ends into the arena and turning a deaf ear to the order to stop; or
- (6) other acts disturbing the order of large-scale mass activities.

A person on whom the penalty of detention is imposed because he disturbs the order of a sports competition may, at the same time, be ordered not to enter a stadium or gymnasium to watch a competition of the same sport within 12 months; if he enters a stadium or gymnasium in violation of the order, he shall be forcibly brought out of the spot.

Article 25 A person who commits one of the following acts shall be detained for not less than 5 days but not more than 10 days and may, in addition, be fined not more than 500 yuan; and if the circumstances are relatively minor, he shall be detained for not more than 5 days or be fined not more than 500 yuan:

- (1) intentionally disturbing public order by spreading rumors, making false reports of dangerous situations and epidemic situations or raising false alarms or by other means;
- (2) disturbing public order by putting in fake hazardous substances such as explosive, toxic, radioactive and corrosive substances or pathogens of infectious diseases; or
- (3) disturbing public order by threatening to set fire, set off explosions, or put in hazardous substances.

Article 26 A person who commits one of the following acts shall be detained for not less than 5 days but not more than 10 days and may, in addition, be fined not more than 500 yuan; and if the circumstances are relatively serious, he shall be detained for not less 10 than days but not more than 15 days and may, in addition, be fined not more than 1,000 yuan:

- (1) gang-fighting;
- (2) chasing or intercepting another person;

(3) forcibly taking and obstinately seizing, or willfully damaging and occupying public or private property; or

(4) other provocative acts.

Article 27 A person who commits one of the following acts shall be detained for not less than 10 days but not more than 15 days and may, in addition, be fined not more than 1,000 yuan; and if the circumstances are relatively minor, he shall be detained for not less than 5 days but not more than 10 days and may, in addition, be fined not more than 500 yuan:

(1) organizing, instigating, coercing, inducing or inciting another person to engage in activities of cults, superstitious sects, or secret societies, or making use of cults, superstitious sects, secret societies, or superstitious activities to disturb social order and harm the health of another people; or

(2) disturbing social order and harming the health of another person by masquerading under the name of religion or qigong.

Article 28 A person who, in violation of State regulations, intentionally interferes with the normal operation of the radio business, or brings about harmful interference with the normal operation of radio stations and refuses to take effective measures to eliminate such interference after the competent department points out the fact, shall be detained for not less than 5 days but not more than 10 days; and if the circumstances are serious, he shall be detained for not less than 10 days but not more than 15 days.

Article 29 A person who commits one of the following acts shall be detained for not more than five days; and if the circumstances are relatively serious, he shall be detained for not less than 5 days but not more than 10 days:

(1) in violation of State regulations, invading a computer information system, which causes harm to the system;

(2) in violation of State regulations, deleting, changing, increasing or interfering with the functions of a computer information system, which makes it impossible for the system to operate normally;

(3) in violation of State regulations, deleting, changing or increasing the stored, processed or transmitted data and the application program of a computer information system; or

(4) intentionally making up or transmitting such destructive programs as computer virus, which adversely affects the normal operation of a computer information system.

## Section 2 Acts Impairing Public Security and Penalties

Article 30 A person who, in violation of State regulations, manufactures, buys, sells, stores, transports, mails, carries, uses, provides or disposes of hazardous substances such as explosive, toxic, radioactive and corrosive substances or pathogens of infectious diseases shall be detained for not less than 10 days but not more than 15 days; and if the circumstances are relatively minor, he shall be detained for not less than 5 days but not more than 10 days.

Article 31 A person who fails to report, as required by relevant regulations, when such hazardous substances as explosive, toxic, radioactive and corrosive substances or pathogens of infectious diseases are stolen, robbed or lost shall be detained for not more than five days; and if he intentionally conceals the fact, he shall be detained for not less than 5 days but not more than 10 days.

Article 32 A person who illegally carries such implements under control according to State regulations as firearms and ammunition, or crossbows and daggers shall be detained for not more than five days and may, in addition, be fined not more than 500 yuan; and if the circumstances are relatively minor, he shall be given a warning or be fined not more than 200 yuan.

A person who illegally carries such implements under control according to State regulations as firearms and ammunition, or crossbows and daggers to a public place or aboard a public transportation means shall be detained for not less than 5 days but not more than 10 days and may, in addition, be fined not more than 500 yuan.

Article 33 A person who commits one of the following acts shall be detained for not less than 10 days but not more than 15 days:

(1) stealing or destroying oil or gas pipe-line installations, electric power and telecommunications facilities, radio and TV facilities, and water-conservancy and flood-control engineering facilities, or such public utilities as ones for hydrological monitoring, hydrographic survey, meteorological monitoring and weather forecast, environmental monitoring, geological monitoring and seismologic monitoring;

(2) moving to another place or destroying boundary tablets and markers of the national border and other boundary markers and installations, or marking installations of territorial land and waters; or

(3) conducting illegal activities affecting the alignment of the national border (frontier) line, or constructing installations which hampers national border (frontier) administration.

Article 34 A person who steals, damages or moves to another place without permission aviation facilities in use, or forcibly enters the control cabin of an aircraft shall be detained for not less than 10 days but not more than 15 days.

A person who uses implements or tools aboard an aircraft in use, which may impair the normal function of the navigation system, and turns a deaf ear to dissuasions shall be detained for not more than 5 days or be fined not more than 500 yuan.

Article 35 A person who commits one of the following acts shall be detained for not less than five days but not more than 10 days and may, in addition, be fined not more than 500 yuan; and if the circumstances are relatively minor, he shall be detained for not more than 5 days or be fined not more than 500 yuan:

(1) stealing, destroying or moving to another place without permission railway facilities, equipment, rolling stock appendages or safety markers;

- (2) placing obstacles on railway lines, or intentionally throwing things to trains;
- (3) digging holes or quarrying and taking sand along railway lines, on bridges or in culverts; or
- (4) privately setting up road junctions or level crossings on railway lines.

Article 36 A person who enters railway shelter networks without permission or walks, sits or lies down on railway lines, or rushes across railway lines when a train is approaching, which endangers traffic safety, shall be given a warning or be fined not more than 200 yuan.

Article 37 A person who commits one of the following acts shall be detained for not more than five days or be fined not more than 500 yuan; and if the circumstances are serious, he shall be detained for not less than 5 days but not more than 10 days and may, in addition, be fined not more than 500 yuan:

- (1) installing or using electrified wire-nettings without permission, or installing or using them at variance with the regulations on safety;
- (2) failing to place covers, fences or warning signs for ditches, wells, ridges and holes when engaging in construction at places where vehicles and pedestrians pass, or intentionally destroying or moving to another place the covers, fences or warning signs; or
- (3) stealing or destroying such public utilities as well covers on road surfaces and lighting facilities.

Article 38 Where an accident endangering safety may occur during such large-scale mass activities as cultural and sports activities held in violation of relevant regulations, such activities shall be ordered to stop, and the participants shall be immediately evacuated; the organizer shall be detained for not less than 5 days but not more than 10 days and shall, in addition, be fined not less than 200 yuan but not more than 500 yuan; and if the circumstances are relatively minor, he shall be detained for not more than five days or be fined not more than 500 yuan.

Article 39 Where the manager of a hotel, restaurant, cinema, theater, entertainment center, sports ground, exhibition hall or other places for public activities violates regulations on safety, so that an accident endangering safety may occur at such a place, and refuses to rectify after a public security organ orders him to do so, he shall be detained for not more than five days.

### Section 3 Acts Infringing upon Rights of the Person and of Property and Penalties

Article 40 If a person commits one of the following acts, he shall be detained for not less than 10 days but not more than 15 days and shall, in addition, be fined not less than 500 yuan but not more than 1,000 yuan; and if the circumstances are relatively minor, he shall be detained for not less than 5 days but not more than 10 days and shall, in addition, be fined not less than 200 yuan but not more than 500 yuan:

- (1) organizing or coercing persons who have not attained to the age of 16 or who are disabled to give terrifying or inhumane performances, or luring such persons into giving such performances;
- (2) forcing another person to work by means of violence or threat or other means; or



(3) illegally restricting another person's freedom of the person, illegally breaking into another person's house or illegally making a body search of another person.

Article 41 A person who coerces another person to go begging, lures such person into begging or uses the person in begging shall be detained for not less than 10 days but not more than 15 days and may, in addition, be fined not more than 1,000 yuan.

A person who continually pesters or forcibly begs from another person or begs by other irritating means shall be detained for not more than five days or be given a warning.

Article 42 A person who commits one of the following acts shall be detained for not more than five days or be fined not more than 500 yuan; and if the circumstances are relatively serious, he shall be detained for not less than 5 days but not more than 10 days and may, in addition, be fined not more than 500 yuan:

- (1) writing letters of intimidation or threatening the personal safety of another person by other means;
- (2) openly humiliating another person or slandering another person by fabricating stories;
- (3) framing-up another person by fabricating stories in an attempt to make the person subject to criminal investigation or to penalty for administration of public security;
- (4) threatening, humiliating or beating up a witness or his close relative or retaliating against either of them;
- (5) repeatedly dispatching pornographic, humiliating, intimidating or other information to disturb the normal life of another person; or
- (6) peeping, secretly taking photos, eavesdropping, or spreading the privacy of another person.

Article 43 A person who beats up another person, or intentionally hurts the body of another person shall be detained for not less than 5 days but not more than 10 days and shall, in addition, be fined not less than 200 yuan but not more than 500 yuan; and if the circumstances are relatively minor, he shall be detained for not more than five days or be fined not more than 500 yuan.

A person who commits one of the following acts shall be detained for not less than 10 days but not more than 15 days and shall, in addition, be fined not less than 500 yuan but not more than 1,000 yuan:

- (1) gang-fighting and hurting another person;
- (2) beating up and hurting a disabled person, pregnant woman, or a person who has not attained to the age of 14 or who is over 60 years old; or
- (3) beating up and hurting another person for more than two times, or beating up and hurting more than two persons once.

Article 44 A person who molests another person or intentionally exposes his/her body in a public place, if the circumstances are abominable, shall be detained for not less than 5 days but not more

than 10 days; if a person molests a mentally disabled person, or a person suffering mental disorder, or a person who has not attained to the age of 14, or commits such act with other serious circumstances, he shall be detained for not less than 10 days but not more than 15 days.

Article 45 A person who commits one of the following acts shall be detained for not more than five days or be given a warning:

- (1) maltreating a family member, who demands handling of the matter; or
- (2) abandoning a supported person who can not look after himself.

Article 46 A person who forcibly buys or sells commodities, forces another person to provide services or to accept services shall be detained for not less than 5 days but not more than 10 days and shall, in addition, be fined not less than 200 yuan but not more than 500 yuan; and if the circumstances are relatively minor, he shall be detained for not more than five days or be fined not more than 500 yuan.

Article 47 A person who incites national hatred or national discrimination, or publishes contents about national discrimination or humiliation in publications or computer information networks shall be detained for not less than 10 days but not more than 15 days and may, in addition, be fined not more than 1,000 yuan.

Article 48 A person who claims under false pretences, hides, destroys, discards, stealthily opens or illegally examines the mail of another person shall be detained for not more than five days or be fined not more than 500 yuan.

Article 49 A person who steals, defrauds, forcibly seizes, openly robs, racketeers or intentionally destroys public or private property shall be detained for not less than 5 days but not more than 10 days and may, in addition, be fined not more than 500 yuan; and if the circumstances are relatively serious, he shall be detained for not less than 10 days but not more than 15 days and may, in addition, be fined not more than 1,000 yuan.

#### Section 4 Acts Impeding Social Administration and Penalties

Article 50 A person who commits one of the following acts shall be given a warning or be fined not more than 200 yuan; and if the circumstances are serious, he shall be detained for not less than 5 days but not more than 10 days, and may, in addition, be fined not more than 500 yuan:

- (1) refusing to carry out the decision or order issued according to law by the people's government in a state of emergency;
- (2) obstructing the staff member of a government department from performing his duties according to law;
- (3) obstructing the passage of such vehicles as fire engines, ambulances, engineering emergency trucks and patrol wagons on emergency duties; or
- (4) forcibly breaking through a warning belt or area set up by a public security organ.

A person who obstructs the people's police from performing their duties according to law shall be given a heavier penalty.

Article 51 A person who pretends to be a staff member of a government department or uses another false identity to practice fraud shall be detained for not less than 5 days but not more than 10 days and may, in addition, be fined not more than 500 yuan; and if the circumstances are relatively minor, he shall be detained for not more than five days or be fined not more than 500 yuan.

If a person cheats people by passing himself off as a member of the army or the police, he shall be given a heavier penalty.

Article 52 A person who commits one of the following acts shall be detained for not less than 10 days but not more than 15 days and may, in addition, be fined not more than 1,000 yuan; and if the circumstances are relatively minor, he shall be detained for not less than 5 days but not more than 10 days and may, in addition, be fined not more than 500 yuan:

- (1) forging, altering, buying or selling official documents, certificates, testimonial papers or seals of a government department, people's organization, enterprise, institution or other organization;
- (2) buying, selling or using forged or altered official documents, certificates or testimonial papers of a government department, people's organization, enterprise, institution or other organization;
- (3) forging, altering, reselling train or bus tickets, ship tickets, air tickets, admission tickets for theatrical performances or sports competitions, or other negotiable bills or vouchers; or
- (4) forging or altering a certificate of vessel registration, buying, selling or using a forged or altered certificate of vessel registration, or altering the number of a vessel engine.

Article 53 Where a vessel, without permission, enters or berths at the waters or islands, which the State forbids or restricts, the leading person of the vessel and the person to be held responsible shall each be fined not less than 500 yuan but not more than 1,000 yuan; and if the circumstances are serious, they shall each be detained for not more than five days and shall, in addition, be fined not less than 500 yuan but not more than 1,000 yuan.

Article 54 A person who commits one of the following acts shall be detained for not less than 10 days but not more than 15 days and shall, in addition, be fined not less than 500 yuan but not more than 1,000 yuan; and if the circumstances are relatively minor, he shall be detained for not more than five days or be fined not more than 500 yuan:

- (1) continuing to engage in activities in the name of a public organization after it is banned because, in violation of State regulations, it engages in activities without registration;
- (2) continuing to engage in activities in the name of a public organization after its registration is cancelled according to law; or
- (3) without a license, operating a business for which, according to State regulations, a license issued by a public security organ is required.

The act mentioned in Subparagraph (3) of the preceding paragraph shall be banned.

If a business operator who has obtained a license from a public security organ violates the relevant administrative regulations of the State and the circumstances are serious, the public security organ may revoke its license.

Article 55 A person who incites or engineers an illegal gathering, parade or demonstration and refuses to listen to dissuasions shall be detained for not less than 10 days but not more than 15 days.

Article 56 If a worker of the hotel industry fails to register the name or the type and number of the identification certificate of a lodging guest in accordance with relevant regulations, or knowingly fails to stop a lodging guest from bringing hazardous substances into the hotel, he shall be fined not less than 200 yuan but not more than 500 yuan.

If a worker of the hotel industry fails to report to the public security organ when he clearly knows that a lodging guests is a criminal suspect or is wanted by the public security organ, he shall be fined not less than 200 yuan but not more than 500 yuan; and if the circumstances are serious, he shall be detained for not more than five days and may, in addition, be fined not more than 500 yuan.

Article 57 Where a house lessor leases out his house to a person without an identification certificate, or fails to register the name or type and number of the identification certificate of the lessee in accordance with relevant regulations, he shall be fined not less than 200 yuan but not more than 500 yuan.

If a house lessor fails to report to the public security organ when he clearly knows that the lessee is making use of the house for criminal activities, he shall be fined not less than 200 yuan but not more than 500 yuan; and if the circumstances are serious, he shall be detained for not more than five days and may, in addition, be fined not more than 500 yuan.

Article 58 A person who, in violation of the provisions of the law on prevention and control of pollution by the noise emitted in the course of social activities, makes noise to impair the daily life of another person shall be given a warning; and if he fails to make amends after the warning, he shall be fined not less than 200 yuan but not more than 500 yuan.

Article 59 If a person commits one of the following acts, he shall be fined not less than 500 yuan but not more than 1,000 yuan; and if the circumstances are serious, he shall be detained for not less than 5 days but not more than 10 days and shall, in addition, be fined not less than 500 yuan but not more than 1,000 yuan:

(1) where the worker of a pawnshop is concerned, failing to examine the relevant certificates or to go through the formalities of registration in dealing with the article pawned, or failing to report to the public security organ when he clearly knows that the pawner is criminal suspect who violates the law and the article is something stolen;

(2) in violation of State regulations, purchasing waste and old equipment specially used for railways, oilfields, power supply, telecommunications, mineral mines, water conservancy and survey as well as urban public utilities;

(3) purchasing stolen goods searched for in the circular of a public security organ, or suspected stolen goods; or

(4) purchasing of other articles, which is prohibited by the State.

Article 60 A person who commits one of the following acts shall be detained for not less than 5 days but not more than 10 days and shall, in addition, be fined not less 200 yuan but not more than 500 yuan:

(1) hiding, transferring, selling off or destroying the property or thing of value distrained, sealed up or frozen by an administrative law-enforcement organs according to law;

(2) forging, concealing or destroying evidence, or providing false testimony or giving false information about a case, which affects the administrative law-enforcement organ in dealing with the case according to law;

(3) knowingly harboring, transferring or selling stolen goods for another person; or

(4) where a criminal being put under surveillance or deprived of political rights according to law, serving a sentence outside the prison under surveillance, such as being under suspended execution of a sentence and being released on medical parole, or a person being subjected to compulsory criminal measures according to law is concerned, committing an act in violation of laws, administrative regulations or of the regulations of the public security department under the State Council on supervision and control.

Article 61 A person who assists in making arrangements for another person illegally to cross, or transports another person across, the national border (frontier) shall be detained for not less than 10 days but not more than 15 days and shall, in addition, be fined not less than 1,000 yuan but not more than 5,000 yuan.

Article 62 A person who provides conditions to another person for illegally crossing the national border (frontier) shall be detained for not less than 5 days but not more than 10 days and shall, in addition, be fined not less than 500 yuan but not more than 2,000 yuan.

A person who illegally crosses the national border (frontier) shall be detained for not more than five days or be fined not more than 500 yuan.

Article 63 A person who commits one of the following acts shall be given a warning or be fined not more than 200 yuan; and if the circumstances are relatively serious, he shall be detained for not less than 5 days but not more than 10 days and shall, in addition, be fined not less than 200 yuan but not more than 500 yuan:

(1) cutting, smearing or deliberately damaging by other means cultural relics, scenic spots or historic sites protected by the State; or

(2) in violation of State regulations, conducting such activities as blasting and excavation in the vicinity of historic and cultural sites under State protection, which threatens the safety of cultural relics.

Article 64 A person who commits one of the following acts shall be fined not less than 500 yuan but not more than 1,000 yuan; and if the circumstances are serious, he shall be detained for not less than 10 days but not more than 15 days and shall, in addition, be fined not less than 500 yuan but not more than 1,000 yuan:

(1) driving another person's motor vehicle without permission; or

(2) driving without obtaining a driver's license or without permission another person's aircraft or motor vessel.

Article 65 A person who commits one of the following acts shall be detained for not less than 5 days but not more than 10 days; and if the circumstances are serious, he shall be detained for not less than 10 days but not more than 15 days and may, in addition, be fined not more than 1,000 yuan:

(1) intentionally destroying or defacing the grave of another person's, or damaging or discarding the remains or ashes of another person's; or

(2) placing a corpse at a public place, or disturbing another person's normal life or work order due to the placing of a corpse and refusing to listen to dissuasion.

Article 66 A prostitute or a person who goes whoring shall be detained for not less than 10 days but not more than 15 days and may, in addition, be fined not more than 5,000 yuan; and if the circumstances are relatively minor, she or he shall be detained for not more than five days or be fined not more than 500 yuan.

A person who, at a public place, touts for prostitution or invites another person for whoring shall be detained for not more than five days or be fined not more than 500 yuan.

Article 67 A person who seduces, shelters or introduces another person to engage in prostitution shall be detained for not less than 10 days but not more than 15 days and may, in addition, be fined not more than 5,000 yuan; and if the circumstances are relatively minor, he shall be detained for not more than five days or be fined not more than 500 yuan.

Article 68 A person who produces, transports, duplicates, sells or lends pornographic materials including books, periodicals, pictures, movies and audio-video products, or disseminates pornographic information by making use of computer information networks, telephones or other means of communications shall be detained for not less than 10 days but not more than 15 days and may, in addition, be fined not more than 3,000 yuan; and if the circumstances are relatively minor, he shall be detained for not more than five days or be fined not more than 500 yuan.

Article 69 A person who commits one of the following acts shall be detained for not less than 10 days but not more than 15 days and shall, in addition, be fined not less than 500 yuan but not more than 1,000 yuan:

- (1) arranging for broadcasting pornographic audio or video tapes;
- (2) arranging for or giving obscene performances; or
- (3) joining a crowd in licentious activities.

A person who provides conditions to people while clearly knowing that they are engaged in the activities specified in the preceding paragraph shall be penalized in accordance with the provisions of the preceding paragraph.

Article 70 A person who provides conditions for gambling for the purpose of making profits, or participates in gambling with a relatively big amount of money, shall be detained for not more than five days or be fined not more than 500 yuan; and if the circumstances are serious, he shall be detained for not less than 10 days but not more than 15 days and shall, in addition, be fined not less than 500 yuan but not more than 3,000 yuan.

Article 71 A person who commits one of the following acts shall be detained for not less than 10 days but not more than 15 days and may, in addition, be fined not more than 3,000 yuan; and if the circumstances are relatively minor, he shall be detained for not more than five days or be fined not more than 500 yuan:

- (1) illegally cultivating opium poppies of less than 500 plants or a small number of mother plants of other narcotic drugs;
- (2) illegally buying, selling, transporting, carrying or possessing a small quantity of the seeds or seedlings of the mother plants of narcotic drugs, such as the opium poppy, which have not been inactivated; or
- (3) illegally transporting, buying, selling, storing or using a small quantity of opium poppy shells.

A person who commits the act specified in Subparagraph (1) of the preceding paragraph uproots the plants, of his own accord, before they are ripe shall not be penalized.

Article 72 A person who commits one of the following acts shall be detained for not less than 10 days but not more than 15 days and may, in addition, be fined not more than 2,000 yuan; and if the circumstances are relatively minor, he shall be detained for not more than five days or be fined not more than 500 yuan:

- (1) illegally possessing opium of less than 200 grams, heroin or methamphetamine of less than 10 grams or a small amount of other narcotic drugs;
- (2) providing another person with narcotic drugs;
- (3) ingesting or injecting narcotic drugs; or
- (4) coercing a medical worker to prescribe narcotic drugs or psychotropic substances or cheating the worker into doing the same.

Article 73 A person who instigates, lures or cheats another person to or into drug ingestion or injection shall be detained for not less than 10 days but not more than 15 days and shall, in addition, be fined not less than 500 yuan but not more than 2,000 yuan.

Article 74 When the public security organ investigates and deals with drug ingestion or injection, gambling, prostitution or whoring activities, a worker of the hotel industry, catering trade, cultural and recreational industry, taxi trade, etc. providing the information to a person who commits a crime in violation of law shall be detained for not less than 10 days but not more than 15 days.

Article 75 A person who raises animals, which disturbs the daily life of another person, shall be given a warning; if he fails to make amends after the warning is given, or connives at his animals, scaring another person, he shall be fined not less than 200 yuan but not more than 500 yuan.

A person who unleashes his animal to hurt another person shall be penalized in accordance with the provisions of the first paragraph of Article 43 of this Law.

Article 76 Where a person who commits an act specified in Articles 67, 68 and 70 refuses to make amends despite repeated admonition, compulsory educational measures may be adopted in accordance with State regulations.

## Chapter IV Procedure of Penalties

### Section 1 Investigation

Article 77 A public security organ shall, in a timely manner, accept a case reported, an accusation or a case informed of, or the voluntary surrender of a person who acts against the administration of public security, as well as cases of acts against the administration of public security transferred by another administrative department or judicial organ, and have the case registered.

Article 78 After accepting a case reported, an accusation or a case informed of, or a voluntary surrender, which the public security organ considers to be an act against the administration of public security, it shall immediately conduct investigation; otherwise, it shall notify the reporter, accuser or informant, or the person who surrenders himself to the police of the fact and explain the reasons.

Article 79 Public security organs and the people's police shall investigate cases of public security according to law. Extorting confessions by torture or collecting evidence by such illegal means as intimidation, enticement or deception is strictly prohibited.

Evidence collected by illegal means shall not be taken as the basis of penalty.

Article 80 When public security organs and the people's police deal with cases of public security, which involve State secret, commercial secret or individual privacy, they shall keep the secret.



Article 81 Where a people's policeman comes under one of the following circumstances when dealing with a case of public security, he shall withdraw; and the person who commits an act against the administration of public security, the victim, their statutory representative shall have the right to demand the policeman's withdrawal:

- (1) being a party or a close relative of the party to the case;
- (2) he or a close relative of his has an interest in the case; or
- (3) having other relations with a party to the case, which may affect the impartial handling of the case.

The withdrawal of a people's policeman shall be decided by the public security organ which he belongs to; and the withdrawal of a leading person of a public security organ shall be decided by the public security organ at the next higher level.

Article 82 Where it is necessary to summon a person who commits an act against the administration of public security for investigation, the matter shall be subject to approval by the leading person of the department that handles the case under a public security organ, and a summons shall be used. Where a person committing an act against the administration of public security is discovered on the spot, he may be summoned orally after the people's policeman shows his work certificate, which shall be noted in the written record of interrogation.

The public security organ shall notify the person summoned of the reasons for and the basis of the summons. A person who refuses to accept a summons without justifiable reasons or evades a summons may compulsorily be summoned.

Article 83 Immediately after the person who commits an act against the administration of public security answers the summons, the public security organ shall conduct interrogation and investigation, which shall not exceed eight hours; and if the circumstances are complicated and, according to the provisions of this Law, a penalty of administrative detention may be applied, the time for the interrogation and investigation shall not exceed 24 hours.

The public security organ shall, without delay, notify the family members of the person summoned of the reasons for the summons and the place of detention.

Article 84 The written record of interrogation shall be checked by the interrogated; and if the latter does not have the ability to read, the written record shall be read out to him. If there are omissions or errors in the record, the interrogated may request supplements or corrections to be made. When the interrogated confirms that the written record is free of error, he shall sign or affix his seal on it, and the people's policeman who does the interrogation shall sign the record as well.

If the interrogated requests, of his own accord, to provide written materials on the matters interrogated, permission shall be given; and when necessary, the people's policeman may also request the interrogated to write down the materials himself.

When a person who commits an act against the administration of public security and who has not attained to the age of 16 is to be interrogated, his parents or guardian shall be notified of the need to be present.

Article 85 To interrogate a victim or other witness, the people's policeman may do it in the unit which he belongs to or at the place where he lives; and when necessary, the people's policeman may also notify the victim or witness that he comes to the public security organ to provide testimony.

When a people's policeman interrogate a victim or other witness outside of the public security organ, he shall show his work certificate.

The provisions of Article 84 of this Law are, at the same time, applicable to the interrogation of a victim or other witness.

Article 86 If the person committing an act against the administration of public security, the victim or other witness who is deaf-mute is interrogated, assistance shall be provided by persons who have a good command of the sign language, which shall be noted clearly in the written record of the interrogation.

If the person committing an act against the administration of public security, the victim or other witness who is not familiar with the spoken or written language common in use in the locality is interrogated, interpreters shall be provided, which shall be noted clearly in the written record of the interrogation.

Article 87 The public security organ may inspect the place, articles and person related to an act against the administration of public security. For such inspection, there shall be two policemen at least, and they shall show their work certificates and the certificating document for inspection issued by public security organ under the people's government at or above the county level. Where it is really necessary to conduct inspection immediately, the policemen may, upon showing their work certificates, conduct inspection on the spot; however, to inspect the domicile of a citizen, they shall show the certificating document for inspection issued by the public security organ under the people's government at or above the county level.

Inspecting the person of a woman shall be done by female workers.

Article 88 A written record of the inspection shall be made, which shall be signed by or affixed with the seals of the inspectors, the inspected and the witnesses; and if the inspected refuses to sign his name, the people's police shall state the fact clearly in the written record.

Article 89 For handling a case of public security, the public security organ may distrain the articles that are related to the case and need to be taken as evidence; and it shall not distrain the property lawfully possessed by the victim or the bona-fide third party, but shall have such property registered. It shall not distrain articles that are not related to the case.

The number of the articles distrained shall be checked accurately together with the witnesses on the spot and the person who possesses those articles, and a list of such articles shall be prepared in duplicate on the spot, which shall be signed, by or affixed with the seals of, the inspectors,

witnesses and the possessor, and of which one copy shall be given to the possessor and the other shall be attached to the file of case for the reference.

The articles distrained shall be preserved properly and not be used for other purposes; and the articles unsuitable to be kept for a long period of time shall be disposed of in accordance with relevant regulations. The articles proved to be unrelated to the case upon investigation shall be returned immediately; the articles that belong to the lawful property of another person upon verification shall be immediately returned after they are registered; and if at the expiration of six months nobody lays claim to such property or there is no way of identifying the obligees, the articles shall be publicly sold by auction or be disposed of in accordance with the relevant regulations of the State, and the proceeds therefrom shall be handed over to the State Treasury.

Article 90 Where it is necessary to solve the special problems in dispute in a case for the purpose of finding out the truth of the case, persons with special knowledge shall be designated or invited to make appraisal; and after appraisal, the experts shall write down their opinions and sign their names.

## Section 2 Decision

Article 91 Penalties for administration of public security shall be decided on by public security organs under the people's government at or above the county level, among which, a warning or a fine of not more than 500 yuan may be decided on by local police stations.

Article 92 With regard to a person, before the decision on a penalty of administrative detention is made, a compulsory measure for restricting his freedom of person has been adopted, the period of time for such measure shall be offset. One day of restricted freedom of person shall be offset against one day of administrative detention.

Article 93 In investigating and handling a case of public security, the public security organ may, in the absence of statements made by the offender, make a decision on a penalty for administration of public security, when the facts of the case can be proved by other evidence. However, where there are only statements made by the offender but no other evidence to prove the facts, the decision on a penalty for administration of public security shall not be made.

Article 94 Before making a decision on a penalty for administration of public security, the public security organ shall notify the person who commits an act against the administration of public security of the facts, reasons and basis for such penalty, as well as of the rights he enjoys according to law.

A person who commits an act against the administration of public security shall have the right to make statements and defend himself. The public security organ must fully listen to the opinions of the said person and shall review the facts, reasons and evidence put forth by the person; and if the facts, reasons or evidence put forth by the person are tenable, the public security organ shall accept them.

The public security organ shall not impose a heavier penalty on the person who commits an act against the administration of public security because the person has made his statements or defended himself.

Article 95 After the investigation into a case of public security is concluded, the public security organ shall make a decision, on the merits of the case, as follows:

- (1) if the illegal act has certainly been committed for which a penalty for administration of public security should be imposed according to law, a decision to such an effect shall be made in light of the seriousness of the circumstances and actual situation;
- (2) if no penalty should be imposed according to law, or the fact about the illegal act are untenable, a decision on no penalty shall be made;
- (3) if the illegal act is suspected of being a crime, the case shall be transferred to a competent organ which shall investigate the criminal responsibility according to law; or
- (4) when finding that the person who commits an act against the administration of public security has committed other illegal acts, it shall, while making a decision on penalty for the said act, notify the relevant administrative department in charge for handling the case.

Article 96 When the public security organ makes a decision on penalty for administration of public security, it shall make a written decision on such penalty. In the written decision the following shall clearly be stated:

- (1) the name, sex, age, title and number of identity card, and address of the person penalized;
- (2) facts and evidence of the illegal act committed;
- (3) type and basis of the penalty;
- (4) means for executing the penalty and the period of time of the penalty;
- (5) channels and time limit for making an application for administrative reconsideration or for bringing an administrative suit if a person is dissatisfied with the decision on penalty; and
- (6) name of the public security organ that makes the decision on penalty and the date on which such a decision is made.

The seal of the public security organ that makes the decision on penalty shall be affixed to the written decision.

Article 97 The public security organ shall read out the written decision on penalty for administration of public security to the person penalized, and hand it over to him on the spot; and where there is no way of reading it out to such person on the spot, the written decision shall be served on the person within two days. Where a decision on penalty of administrative detention is made, the family members of the person penalized shall be notified without delay.

Where there is a victim in the case, the public security organ shall send a duplicate of the written decision to the victim.

Article 98 Before deciding to revoke the license or to impose a fine of not less than 2,000 yuan as a penalty for the administration of public security, the public security organ shall notify the person who commits an act against the administration of public security that he has the right to demand the holding of a hearing; and where the said person demands a hearing, the public security organ shall, in a timely manner, hold the hearing according to law.

Article 99 The period of time for the public security organ to handle a case of public security shall not exceed 30 days from the date it accepts case; and where it is a major and complicated case, the period of time may be extended for another 30 days upon approval by the public security organ at the next higher level.

The time for making evaluation in order to find out the facts about a case shall not be counted into the period of time for handling a case of public security.

Article 100 Where the facts about the act committed against the administration of public security are clear and the evidence is irrefutable, for which a warning is to be given or a fine of not more than 200 yuan is to be imposed, the decision on such a penalty for administration of public security may be made on the spot.

Article 101 Where a decision on a penalty for administration of public security is made on the spot, the people's policeman shall show his work certificate to the person who commits an act against the administration of public security, and fill out a written decision on the penalty. The written decision on the penalty shall, on the spot, be handed over to the person penalized; and where there is a victim in the case, the duplicate of the written decision shall be sent to him.

In the written decision on the penalty mentioned in the preceding paragraph shall clearly be stated the name of the person penalized, the illegal act, the basis for the penalty, the amount of the fine, the date, place, and the title of the public security organ, and the written decision shall be signed by, or affixed with the seal of, the people's policeman who handles the case.

Where the decision on a penalty for administration of public security is made on the spot, the people's policeman who handles the case shall, within 24 hours, report the matter for the record to the public security organ which he belongs to.

Article 102 Where the person penalized is not satisfied with the decision on penalty for administration of public security, he may apply for administrative reconsideration or bring an administrative suit according to law.

### Section 3 Execution

Article 103 The person on whom the penalty for administrative detention is imposed upon decision shall be delivered by the public security organ to the house of detention for execution of the decision it made.

Article 104 The person on whom a fine is imposed as a penalty shall pay the fine to a designated bank within 15 days from the date he receives the written decision on the penalty. However, under one of the following circumstances, the people's policeman may collect the fine on the spot:

(1) if the amount of the fine imposed is not more than 50 yuan and the person penalized has no objection to the fine;

(2) if in an outlying area, or on water, or in a place not easily accessible where the public security organ or the people's policeman makes a decision on a fine in accordance with the provisions of this Law, the person penalized makes such a proposal because it is really difficult for him to pay the fine to the designated bank; or

(3) if it is difficult to enforce the penalty unless the fine is collected on the spot, because the person penalized has no permanent dwelling place in the locality.

Article 105 The people's policeman who collects a fine on the spot shall, within two days from the date he collects the fine, hand the fine over to the public security organ which he belongs to; if a fine is collected on the spot on water or aboard a train, he shall, within two days from the date he arrives at the port or railway station, hand the fine over to the public security organ which he belongs to; and the public security organ shall, within two days from the date it receives the fine, hand the fine over to the designated bank.

Article 106 When a people's policeman collects a fine on the spot, he shall produce to the person penalized a voucher for the fine which is uniformly printed and issued by the finance department of the people's government of a province, autonomous region, or municipality directly under the Central Government; and if no such voucher is produced, the person penalized shall have the right to refuse to pay the fine.

Article 107 Where a person penalized who refuses to accept the decision on a penalty of administrative detention applies for administrative reconsideration or bring an administrative suit, he may apply to the public security organ for a deferred enforcement of the administrative detention. If the public security organ believes that such deferment will not create danger to the society, and after the person penalized or his close relative proposes a guarantor who conforms to the conditions provided for in Article 108 of this Law, or after the bail is paid at the rate of 200 yuan per day for the administrative detention, the decision on the penalty of administrative detention shall be deferred from enforcement.

Article 108 A guarantor shall meet the following conditions:

- (1) being not involved in the case concerned;
- (2) enjoying political rights, and his freedom of person being not restricted;
- (3) having a registered permanent residence and a permanent dwelling locally; and
- (4) having the ability to perform the obligations of a guarantor.

Article 109 A guarantor shall guarantee that the person guaranteed will not escape from the enforcement of the penalty of administrative detention.

Where the guarantor fails to perform his obligations, so that the person guaranteed escapes from the enforcement of the penalty of administrative detention, the public security organ shall impose on him a fine of not more than 3,000 yuan.

Article 110 Where a person on whom the penalty of administrative detention is imposed upon decision escapes from the enforcement of the penalty after payment of the bail for deferred execution of the administrative detention, the bail shall be confiscated and handed over to the State Treasury, and the decision already made on the penalty of administrative detention shall be executed all the same.

Article 111 Where the decision on penalty of administrative detention is withdrawn, or the penalty of administrative detention begins to be executed, the bail collected by the public security organ shall be returned to the payer without delay.

## Chapter V Law Enforcement Supervision

Article 112 Public security organs and the people's police shall handle cases of public security according to law and in an impartial, strict and highly efficient manner, and enforce laws with civility, and they shall not engage in malpractices for private gain.

Article 113 In handling cases of public security, public security organs and the people's police are forbidden to beat, abuse, mistreat or humiliate the persons who commit acts against the administration of public security.

Article 114 In handling cases of public security, public security organs and the people's police shall voluntarily accept supervision by the society and citizens.

Where a public security organ and people's policeman fails to strictly enforce laws in handling cases of public security or commits an act in violation of laws or rules of discipline, any unit or individual shall have the right to report to or lodge an accusation before a public security organ or the people's procuratorate or an administrative supervisory organ; and the organ that receives such report or accusation shall, without delay, handle it in compliance with its duties.

Article 115 When executing the penalty of a fine according to law, the public security organ shall, in accordance with the provisions of relevant laws and administrative regulations, separate the decision-making on fines from the collection of fines; and all the fines collected shall be handed over to the State Treasury.

Article 116 If when handling cases of public security, a people's policeman commits one of the following acts, he shall be given an administrative sanction according to law; and if a crime is constituted, he shall be investigated for criminal responsibility according to law:

- (1) extorting a confession by torture, or physically punishing, maltreating or humiliating another person;
- (2) exceeding the period of time set for interrogation, investigation and verification, thus restricting the freedom of person;

- (3) failing to carry out the system of separating the decision on fines from the collection of fines or failing to hand the fines collected or the property confiscated over to the State Treasury in accordance with the provisions or failing to dispose of such property according to law;
- (4) privately dividing, seizing, misappropriating or intentionally damaging the money or things of value collected or distrained;
- (5) in violation of regulations, using or failing to return the property or things of value to the victim;
- (6) in violation of the provisions, failing to return the bails in a timely manner;
- (7) taking the advantage of the position to accept or receive the property or things of value from another person or seek other benefits;
- (8) failing to produce a voucher for a fine collected on the spot or failing to truthfully fill out the amount of a fine;
- (9) failing to dispatch the police to the scene as soon as receiving a request for stopping an act against the administration of public security;
- (10) sending secret messages to a person who violates the law or commits a crime, when investigating and handling activities against the administration of public security; or
- (11) other acts involving engagement in malpractices for personal gain, abuse of power or failure to perform the statutory duties according to law.

Where in handling cases of public security, a public security organ commits one of the acts mentioned in the preceding paragraph, the persons directly in charge and the other persons directly responsible shall be given appropriate administrative sanctions.

Article 117 Where public security organs and the people's police unlawfully exercise their functions and powers and infringe upon the legitimate rights and interests of citizens, legal persons or other organizations, they shall make apologies; and where damages are caused, they shall bear the responsibility for compensation according to law.

## Chapter VI Supplementary Provisions

Article 118 The figures used following the terms of "not less than", "not more than" or "within" in this Law include these figures themselves.

Article 119 This Law shall go into effect as of March 1, 2006. The Regulations of the People's Republic of China on Administrative Penalties for Public Security promulgated on September 5, 1986, and revised and promulgated on May 12, 1994 shall be nullified at the same time.



# **Law of the People's Republic of China on Administrative Supervision**

Adopted at the 25th Meeting of the Standing Committee of the Eighth National People's Congress on May 9, 1997 and promulgated by Order No. 85 of the President of the People's Republic of China on May 9, 1997

## Contents

Chapter I General Provisions

Chapter II Supervisory Organs and Supervisors

Chapter III Functions and Duties of Supervisory Organs

Chapter IV Jurisdiction of Supervisory Organs

Chapter V Procedure for Supervision

Chapter VI Legal Responsibility

Chapter VII Supplementary Provisions

## Chapter I General Provisions

Article 1 This Law is enacted in accordance with the Constitution, in order to strengthen the supervision, guarantee the smooth implementation of government decrees, maintain administrative discipline, facilitate the building of an honest and clean government, improve administration and raise administrative efficiency.

Article 2 Supervisory organs are organs that exercise the function of supervision on behalf of the people's governments, supervising in accordance with this Law administrative organs and public servants of the State and other persons appointed by administrative organs of the State.

Article 3 Supervisory organs shall exercise their functions and powers in accordance with law and shall be subject to no interference from any administrative departments, public organizations or individuals.

Article 4 Supervision shall be enforced in adherence to the principles of seeking truth from facts, laying stress on evidence, investigation and study, and applying laws and rules of administrative discipline to people on an equal footing.

Article 5 In supervision, education shall be combined with punishment, and supervision and inspection shall be conducted for the purpose of improving work.

Article 6 Supervision shall be enforced by relying on the general public. Supervisory organs shall institute an informing system, under which all citizens shall have the right to bring to supervisory organs accusations or expositions against any administrative organs or public servants of the State or any persons appointed by State administrative organs that violate laws or are derelict in their duties.

## Chapter II Supervisory Organs and Supervisors

Article 7 The supervisory organ under the State Council shall be in charge of supervision throughout the country.

A supervisory organ of a local people's government at or above the county level shall be responsible for supervision in its administrative area, and shall be responsible and report its work to the people's government to which it belongs and to the supervisory organ at the next higher level. Supervision shall be enforced mainly under the guidance of the supervisory organ at a higher level.

Article 8 A supervisory organ of a people's government at or above the county level may, where necessary and with the approval of the people's government to which it belongs, have supervisory bodies or supervisors in departments under the government.

The supervisory bodies and supervisors dispatched by the supervisory organs shall be responsible and report their work to the supervisory organs that dispatch them.

Article 9 A supervisor shall abide by laws and observe rules of discipline, be faithful to their duties, enforce laws impartially, remain honest and upright and keep secrets.

Article 10 A supervisor shall be familiar with supervision and shall have received an appropriate education and acquired sufficient professional knowledge.

Article 11 The chief or deputy chief of a supervisory organ of a local people's government at or above the county level shall be appointed or dismissed from office with the consent of the supervisory organ at the next higher level before the decision on the appointment or dismissal is submitted for approval.

Article 12 A supervisory organ shall apply a system of supervision over the supervisors' performance of their official duties and observance of the rules of discipline.

Article 13 A supervisor, in performing his official duties in accordance with law, shall be protected by law.

No organization or individual may refuse to undergo supervision, or obstruct the supervisors' performance of their official duties, or retaliate against supervisors.

Article 14 A supervisor shall withdraw when he himself or his close relatives have an interest in the matter of supervision he is handling.

### Chapter III Functions and Duties of Supervisory Organs

Article 15 The supervisory organ under the State Council shall exercise supervision over the following government departments and persons:

- (1) the various departments under the State Council and the public servants of the State working in such departments;
- (2) other persons appointed by the State Council and the various departments under it; and
- (3) the people's governments of the provinces, autonomous regions and municipalities directly under the Central Government and the leading members of such governments.

Article 16 The supervisory organ of a local people's government at or above the county level shall exercise supervision over the following government departments and persons:

- (1) the various departments under the people's government to which it belongs and the public servants of the State working in such departments;
- (2) other persons appointed by the people's government to which it belongs and by the various departments under this government; and
- (3) the people's government at the next lower level and its leading members.

The supervisory organ of the people's government of a county, autonomous county, city not divided into districts or a municipal district shall, in addition, exercise supervision over the public servants of the State working in the people's governments of townships, nationality townships and towns under the jurisdiction of the people's government to which it belongs as well as other persons appointed by the governments of these townships, nationality townships and towns.

Article 17 A supervisory organ at a higher level may handle matters of supervision that are under the supervision of a supervisory organ at a lower level and may, when necessary, handle such matters that are under the jurisdiction of the supervisory organs at the various lower levels.

Where a dispute over jurisdiction arises between supervisory organs, it shall be settled by a supervisory organ at a higher level above both the disputing parties.

Article 18 A supervisory organ shall perform the following duties in order to fulfill its function of supervision:

- (1) to inspect the problems of the administrative organs of the State that occur in the course of their observing and enforcing laws and rules and regulations as well as government decisions and decrees;

- (2) to accept and handle accusations and expositions against administrative organs or public servants of the State or other persons appointed by such organs that violate rules of administrative discipline;
- (3) to investigate and handle violations of rules of administrative discipline committed by administrative organs or public servants of the State or other persons appointed by such organs;
- (4) to accept and handle complaints presented by public servants of the State or other persons appointed by administrative organs of the State who refuse to accept decisions on administrative sanctions made by the competent administrative organs, and other complaints to be accepted and handled by supervisory organs as prescribed by laws and administrative rules and regulations; and
- (5) to perform other duties as prescribed by laws and administrative rules and regulations.

#### Chapter IV Jurisdiction of Supervisory Organs

Article 19 A supervisory organ shall have the right to take the following measures to perform its official duties:

- (1) to require the departments and persons under supervision to provide documents, data, financial accounts and other materials relevant to the matters under supervision for examination and duplication;
- (2) to require the departments and persons under supervision to explain or clarify questions concerning the matters under supervision; and
- (3) to order the departments and persons under supervision to cease violating laws, rules and regulations and rules of administrative discipline.

Article 20 In investigating violations of the rules of administrative discipline, a supervisory organ may adopt the following measures in light of actual conditions and needs:

- (1) to temporarily seize and seal up documents, data, financial accounts and other relevant materials which may be used as proof of violations of the rules of administrative discipline;
- (2) to order the units and persons suspected of being involved in a case not to sell off or transfer any property relevant to the case during the period of investigation;
- (3) to order the persons suspected of violating the rules of administrative discipline to explain and clarify questions relevant to the matters under investigation at a designated time and place; however, no such persons may be taken into custody or detained in disguised form; and
- (4) to propose to the competent authorities that they suspend the persons suspected of seriously violating the rules of administrative discipline from execution of their official duties.

Article 21 In investigating violations of the rules of administrative discipline, such as graft, bribery and misappropriation of public funds, a supervisory organ may inquire about the deposits of the suspected units and persons at banks or other banking institutions, with the approval of the leading members of a supervisory organ at or above the county level. When necessary, it may request the People's Court to adopt preservation measures to freeze the deposits of such persons at banks or other banking institutions in accordance with law.

Article 22 In handling cases of violating the rules of administrative discipline, a supervisory organ may request the authorities of public security, auditing, taxation and the Customs, the administrative departments for industry and commerce and other authorities to extend assistance.

Article 23 A supervisory organ may, on the basis of findings from examinations and investigations, make a supervisory recommendation under any of the following situations;

- (1) Where the parties concerned refuse to enforce the laws or rules and regulations or violate the laws or rules and regulations as well as the decisions or decrees of the people's government, which should be set right;
- (2) Where the decisions, decrees or instructions issued by departments under the people's government to which it belongs or by the people's governments at lower levels contravene the laws or rules and regulations or State policies and should be modified or revoked;
- (3) Where the interests of the State or the collective or the lawful rights and interests of citizens are impaired and remedial measures need be taken;
- (4) Where decisions on employment, appointment, dismissal from office, reward or punishment are obviously inappropriate and should be rectified;
- (5) Where the parties concerned should be given administrative penalties in accordance with relevant laws or rules and regulations; or
- (6) Other situations for which a supervisory recommendation is needed.

Article 24 A supervisory organ may, on the basis of findings from examinations and investigations, make a supervisory decision or recommendation under any of the following situations:

- (1) Where the parties concerned violate the rules of administrative discipline and should be given administrative sanctions in accordance with law, such as administrative warning, the recording of a demerit, the recording of a major demerit, demotion, dismissal from office or discharge; or
- (2) Where the parties concerned take money or property in violation of the rules of administrative discipline, which should be confiscated, recovered, or returned or compensated under orders.

A supervisory decision or recommendation for the situation mentioned in sub-paragraph (1) of the preceding paragraph shall be made in accordance with the State regulations on the limits of authority and procedure for personnel management.

Article 25 A supervisory decision made by a supervisory organ in accordance with law shall be implemented by the departments and persons concerned. A supervisory recommendation made

by a supervisory organ in accordance with law shall be adopted by the departments concerned, unless they have justifiable reasons not to do so.

Article 26 A supervisory organ shall have the right to inquire of the units and individuals involved in the matters under supervision.

Article 27 Leading members of a supervisory organ may attend as observers relevant meetings of the people's government to which it belongs, and supervisors may attend as observers meetings concerning the matters under supervision held by the departments under supervision.

Article 28 A supervisory organ may, in accordance with relevant regulations, award the persons who have rendered meritorious services in accusing or exposing serious violations of laws and the rules of discipline.

## Chapter V Procedures of Supervision

Article 29 A supervisory organ shall conduct inspection in accordance with the following procedure:

- (1) to register the matters that need inspection;
- (2) to formulate plans for inspection and organize their implementation;
- (3) to submit reports on the results of inspection to the people's government to which it belongs or the supervisory organ at a higher level; and
- (4) to make a supervisory decision or recommendation, on the basis of the findings from inspection.

For the registration of a consequential matter for inspection, a supervisory organ shall report the matter to the people's government to which it belongs and the supervisory organ at the next higher level for the record.

Article 30 A supervisory organ shall investigate and handle violations of the rules of administrative discipline in accordance with the following procedure:

- (1) to conduct preliminary examination of the matters that require investigation and handling, and to register the matters for which it believes that there are facts to prove the violations of the rules of administrative discipline and that the parties concerned should be investigated for their responsibility for violating the rules of administrative discipline;
- (2) to make arrangements for investigation to collect relevant evidence;
- (3) to handle cases for which there is evidence to prove the violation of the rules of administrative discipline and the parties concerned should be given administrative sanctions or handled otherwise; and

(4) to make a supervisory decision or recommendation.

For the registration of a consequential and complicated case, a supervisory organ shall report the matter to the people's government to which it belongs and the supervisory organ at the next higher level for the record.

Article 31 Where through investigation into a registered case the supervisory organ believes that there are no facts to prove the violation of the rules of administrative discipline or that there is no need to investigate the parties concerned for their responsibility for violation of the rules of administrative discipline, it shall quash the case and notify the investigated units and the authorities above them or the investigated persons and their units of the matter.

For the quashing of a consequential and complicated case, a supervisory organ shall report the matter to the people's government to which it belongs and to the supervisory organ at the next higher level for the record.

Article 32 A case registered by a supervisory organ for investigation shall be closed within six months from the date of registration. Where the period for handling a case need be extended due to special reasons, it may be extended appropriately, but it may not exceed one year at the maximum. And the matter shall be reported to the supervisory organ at the next higher level for the record.

Article 33 A supervisory organ shall, in the course of inspection and investigation, hear the statements and explanations made by the departments or persons under supervision.

Article 34 Major supervisory decisions and recommendations made by a supervisory organ shall be submitted to the people's government to which it belongs and to the supervisory organ at the next higher level for consent. Major supervisory decisions and recommendations made by the supervisory organ under the State Council shall be submitted to the State Council for consent.

Article 35 Supervisory decisions or recommendations shall be delivered in writing to the units or persons concerned.

Article 36 The units or persons concerned shall notify the supervisory organ within 30 days from the date of receiving the supervisory decision or recommendation of how such decision has been implemented or of how such recommendation has been dealt with.

Article 37 Where a public servant of the State or any other person appointed by an administrative organ of the State refuses to accept a decision made by the competent administrative organ on imposing administrative sanctions on him, he may lodge a complaint to the supervisory organ within 30 days from the date of receiving such decision. The supervisory organ on its part shall, within 30 days from the date of receiving the complaint, make a decision after review of the decision. If he still refuses to accept the decision made after the review, he may, within 30 days from the date of receiving the decision, apply to the supervisory organ at the next higher level for check. The supervisory organ at the next higher level shall, within 60 days from the date of receiving the application, make a decision after checking the decision.

During the period of review or check, implementation of the decision originally made shall not be suspended.

Article 38 If, after the review conducted upon receiving the complaint against the decision made by the competent administrative organ on imposing administrative sanctions, the supervisory organ believes that the original decision is inappropriate, it may propose to the organ that made the decision to modify or revoke its decision; it may also, within the scope of its functions and powers, directly decide to modify or revoke such decision.

Complaints about other matters to be accepted and handled by supervisory organs, as provided for by laws and administrative rules and regulations, shall be governed by such laws and administrative rules and regulations.

Article 39 Whoever refuses to accept a supervisory decision may, within 30 days from the date or receiving the decision, apply to the organ that made the decision for reexamination; the supervisory organ on its part shall, within 30 days from the date of receiving the application for reexamination, make a decision after reexamination. If he still refuses to accept the decision made after reexamination, he may, within 30 days from the date of receiving the decision, apply to the supervisory organ at the next higher level for check, which shall, within 60 days from the date of receiving the application for check, make a decision after the check.

During the period of reexamination or check, implementation of the decision originally made shall not be suspended.

Article 40 Where a supervisory organ at a higher level considers a supervisory decision made by a supervisory organ at a lower level inappropriate, the former may instruct the latter to modify or revoke this decision or, when necessary, the former may also directly decide to modify or revoke the decision.

Article 41 The decisions made by a supervisory organ at a higher level after check and the decisions made by the supervisory organ under the State Council after review or reexamination shall be final.

Article 42 Whoever has any objections to a supervisory recommendation may, within 30 days from the date of receiving the recommendation, raise his objections to the supervisory organ that made the recommendation, the supervisory organ on its part shall, within 30 days from the date of receiving the objections, give a reply. If he still has objections to the reply, the supervisory organ shall submit the matter to the people's government to which it belongs or to the supervisory organ at the next higher level for a decision.

Article 43 Where a supervisory organ, in the course of handling matters under supervision, finds that the matters under investigation do not fall within the scope of functions and duties of the supervisory organ, it shall transfer them to the unit that has the authority to handle them. In the case of a criminal suspect, the matter shall be transferred to a judicial organ, which shall handle the case according to law.



The unit or organ that accepts the matter transferred shall notify the said supervisory organ of how the matter is handled.

## Chapter VI Legal Responsibility

Article 44 Where departments or persons under supervision violate the provisions of this Law by committing any of the following acts, the competent authorities or supervisory organ shall order them to mend their ways and circulate a notice of criticism against the departments and shall, in accordance with law, impose administrative sanctions on the persons who are directly in charge and the other persons who are directly responsible for the violation:

- (1) to withhold the truth, provide false evidence or conceal, transfer, alter or destroy evidence;
- (2) to deliberately delay providing documents, data, financial accounts or other materials or information relevant to the matters under supervision or refuse to provide them;
- (3) to sell off or transfer suspect property during the period of investigation;
- (4) to refuse to explain or clarify the questions raised by the supervisory organ;
- (5) to refuse to implement the supervisory decision or refuse to adopt the supervisory recommendation without justifiable reasons; or
- (6) to have committed any other acts in violation of the provisions of this Law, where the circumstances are serious.

Article 45 Whoever retaliates against or frames up any complainants, accusers, exposers or supervisors shall be given administrative sanctions in accordance with law; if the act constitutes a crime, he shall be investigated for criminal responsibility in accordance with law.

Article 46 If a supervisor abuses his power, commits malpractices for selfish ends, neglects his duties or divulges secrets, he shall be given administrative sanctions in accordance with law; if his act constitutes a crime, he shall be investigated for criminal responsibility in accordance with law.

Article 47 If a supervisory organ or supervisor exercises its or his functions and powers in violation of laws, infringing upon the lawful rights and interests of a citizen, legal person or any other organization and thus causing damage thereto, it or he shall make compensation in accordance with law.

## Chapter VII Supplementary Provisions

Article 48 This Law shall go into effective as of the date of its promulgation. The Regulations of the People's Republic of China on Administrative Supervision promulgated by the State Council on December 9, 1990 shall be repealed at the same time.

# **Law of the People's Republic of China on Administrative Reconsideration**

Adopted at the 9th Meeting of the Standing Committee of the Ninth National People's Congress on April 29, 1999 and promulgated by Order No. 16 of the President of the People's Republic of China on April 29, 1999

## Contents

### Chapter I General Provisions

### Chapter II The Limits of Administrative Reconsideration

### Chapter III Application for Administrative Reconsideration

### Chapter IV Acceptance of Application for Administrative Reconsideration

### Chapter V Decision Made After Administrative Reconsideration

### Chapter VI Legal Responsibility

### Chapter VII Supplementary Provisions

### Chapter I General Provisions

Article 1 This Law is enacted in accordance with the Constitution for the purpose of preventing and setting right illegal or inappropriate specific administrative acts, protecting the lawful rights and interests of citizens, legal persons and other organizations, and ensuring and supervising the performance of functions and powers by administrative organs' according to law.

Article 2 This Law shall be applicable to cases where citizens, legal persons or other organizations apply to administrative organs for administrative reconsideration when they consider that certain specific administrative acts infringe upon their lawful rights or interests, and where administrative organs accept the applications and make decisions after administrative reconsideration.

Article 3 The administrative organs that perform the function of administrative reconsideration in accordance with this Law are administrative reconsideration organs. When dealing with the specific affairs in respect of administrative reconsideration, the department in charge of legal work under the administrative reconsideration organs shall perform the following functions and responsibilities:

1. accepting applications for administrative reconsideration;
2. conducting investigation among and collecting evidence from organizations and persons concerned, and consulting documents and materials;

3. examining whether the specific administrative act for which administrative reconsideration has been applied is lawful or appropriate, and drafting a decision after administrative reconsideration;
4. dealing with or transmitting applications for examination of the provisions listed under Article 7 of this Law;
5. in accordance with the prescribed limits of authority and procedures, putting forward suggestions for handling acts taken by administrative organs in violation of the provisions of this Law;
6. handling affairs in response to administrative lawsuits brought by the parties who refuse to accept decisions made after administrative reconsideration; and
7. other functions and responsibilities as prescribed by laws and regulations.

Article 4 When performing their functions of administrative reconsideration, administrative reconsideration organs shall follow the principles of legality, impartiality, openness, promptness, and convenience to the people, and shall correct mistakes so as to guarantee the appropriate implementation of laws and regulations.

Article 5 A citizen, legal person or other organization that refuses to accept the decision made after administrative reconsideration may, in accordance with the provisions of the Administrative Procedure Law, bring an administrative lawsuit before a People's Court, with the exception of those decisions that are final as prescribed by law.

## Chapter II The Limits of Administrative Reconsideration

Article 6 Citizens, legal persons and other organizations may apply for administrative reconsideration according to this Law, if they:

1. refuse to accept decisions made by administrative organs to impose on them administrative penalties such as disciplinary warning, fine, confiscation of illegal gains, confiscation of unlawful property or things of value, order for suspension of production or business operation, temporary suspension or rescission of permit, temporary suspension or rescission of license, and administrative detention;
2. refuse to accept decisions made by administrative organs to impose on them compulsory administrative measures including restriction of the freedom of person and sealing up, distraining or freezing of property;
3. refuse to accept decisions made by administrative organs concerning alteration, suspension or revocation of such documents as permits, licenses and qualification certificates;

4. refuse to accept decisions made by administrative organs concerning the right of ownership in or the right to the use of natural resources such as land, mineral resources, water, forests, mountains or hills, grassland, wasteland, tidal flats and sea areas;
5. consider that administrative organs infringe upon their lawful decision-making power for operation;
6. consider that administrative organs infringe upon their lawful property rights and rights to receive education upon application;
7. consider that administrative organs illegally raise funds, collect money or things of value, apportion expenses or illegally require them to perform other duties;
8. consider that administrative organs fail to deal with, according to law, their applications for such documents as permits, licenses and qualification certificates, or their applications for examination and approval and registration of affairs concerned, while the applications meet the requirements as prescribed by law;
9. apply to administrative organs requesting them to perform their statutory duties of protecting the rights of the persons, property rights or the right to receive an education, but the said organs fail to do so in accordance with law;
10. apply to administrative organs requesting them to pay, according to law, pensions for the disabled or for the families of the deceased, social insurance money or the guaranteed minimum for living expenses, but the said organs fail to do so in accordance with law; or
11. consider that other specific administrative acts taken by administrative organs infringe upon their lawful rights or interests.

Article 7 If citizens, legal persons or other organizations consider illegal the following provisions, which the administrative organs take as the basis for their specific administrative acts, they may also apply for examination of these provisions when applying for administrative reconsideration of the said acts:

1. provisions formulated by departments under the State Council;
2. provisions formulated by local people's governments at or above the county level and the department under them; and
3. provisions formulate by township or town people's governments.

The provisions listed in the preceding paragraph do not include rules and regulations formulated by the ministries and commissions under the State Council and by local people's governments. The examination of rules and regulations shall be carried out in accordance with laws and administrative regulations.

Article 8 Anyone who refuses to accept administrative sanctions or other decisions concerning personnel affairs made by administrative organs may appeal in accordance with the provisions of relevant laws and administrative regulations.

Anyone whom refuses to accept mediations conducted or other solutions made by administrative organs in civil disputes may, in accordance with law, apply for arbitration or bring a lawsuit before a People's Court.

### Chapter III Application for Administrative Reconsideration

Article 9 Citizens, legal persons and other organizations that consider that certain specific administrative acts infringe upon their lawful rights or interests may apply for administrative reconsideration within 60 days from the date when they come to know such administrative acts, except where the time limit for application is more than 60 days as prescribed by law.

In case of delay in applying within the statutory time limit occasioned by force majeure or for other justifiable reasons, the counting of the days shall be resumed from the date when the obstacle is removed.

Article 10 Citizens, legal persons and other organizations that apply for administrative reconsideration in accordance with this Law are the applicants.

Where the citizen who has the right to apply for administrative reconsideration deceases, his or her close relatives may apply for administrative reconsideration. Where the citizen who has the right to apply for administrative reconsideration has no capacity or has only limited capacity for civil conduct, his or her legal representative may apply for administrative reconsideration on his or her behalf. If the legal person or other organization that has the right to apply for administrative reconsideration ceases to exist, the legal person or other organization that succeeds to its rights may apply for administrative reconsideration.

Other citizens, legal persons or other organizations that have interests in the specific administrative acts on which administrative reconsideration has been applied may take part in administrative reconsideration as a third party.

When a citizen, legal person or other organization refuses to accept a certain specific administrative act taken by an administrative organ and applies for administrative reconsideration, the said administrative organ is the defending party to the application.

The applicant and the third party may entrust their representatives to take part in the administrative reconsideration on their behalf.

Article 11 The applicant may apply for administrative reconsideration in a written or oral form; in case of oral application, the administrative reconsideration organ shall record on the spot the basic particulars about the applicant, the requests for administrative reconsideration, and the main facts, reasons and time of the application for administrative reconsideration.

Article 12 When refusing to accept a specific administrative act taken by the department of a people's government at or above the county level, the applicant may choose to apply to the

people's government at the same level or to the competent department at a higher level for administrative reconsideration.

When refusing to accept a specific administrative act taken by the administrative organ that exercises vertical leadership over the Customs, banking, national tax and foreign exchange administration or by a State security organs, the applicant shall apply to the competent department at a higher level for administrative reconsideration.

Article 13 When refusing to accept a specific administrative act taken by a local people's government at any level, the applicant shall apply to the local people's government at a higher level for administrative reconsideration.

When refusing to accept a specific administrative act taken by a local people's government at the county level under the organ dispatched by a people's government of a province or autonomous region, the applicant shall apply to the said organ for administrative reconsideration.

Article 14 When refusing to accept a specific administrative act taken by a department under the State Council or by the people's government of a province, autonomous region or municipality directly under the Central Government, the applicant shall apply to the said departments or people's government for administrative reconsideration. When refusing to accept a decision made after administrative reconsideration, the applicant may bring an administrative lawsuit before a People's Court, or apply to the State Council for arbitration, which shall give a final ruling in accordance with the provisions of this Law.

Article 15 When refusing to accept a specific administrative act taken by other administrative organs or organizations than those mentioned in Articles 12, 13 and 14 of this Law, the applicant shall apply for administrative reconsideration in accordance with the following provisions:

1. When refusing to accept a specific administrative act taken by an organ dispatched, in accordance with law, by a local people's government at or above the county level, the applicant shall apply to the said people's government for administrative reconsideration;
2. When refusing to accept a specific administrative act taken, in its own name and in accordance with the provisions of laws, rules and regulations, by an organ dispatched, in accordance with law, a governmental working department, the applicant shall apply to the said department or to the local people's government at the same level as the said department;
3. When refusing to accept a specific administrative act taken by an organization authorized by laws and regulations, the applicant shall apply for administrative reconsideration to the local people's government, the department of the local people's government or the department under the State Council that directly administers the said organization;
4. When refusing to accept a specific administrative act taken jointly by two or more administrative organs in their names, the applicant shall apply for administrative reconsideration to their common administrative organ at a higher level; and
5. When refusing to accept a specific administrative act taken by an administrative organ before it is abolished, the applicant shall apply for administrative reconsideration to the administrative

organ at a level higher than one that carries on the exercise of the functions and powers of the abolished organ.

In any of the cases mentioned in the preceding paragraph, the applicant may also apply for administrative reconsideration to the people's government at the county level in the place where the specific administrative act is taken. The said people's government, having accepted the application, shall deal with it in accordance with the provisions in article 18 of this Law.

Article 16 Where citizens, legal persons or other organizations have applied for administrative reconsideration and the administrative reconsideration organs have already accepted the applications according to law, or where laws or regulations stipulate that they apply for administrative reconsideration to the administrative reconsideration organs before they can bring administrative lawsuits before the People's Courts when they refuse to accept the decisions made after administrative reconsideration, the said citizens, legal persons or other organizations may not bring administrative lawsuits before the People's Courts before the expiration of the statutory time limit set for administrative reconsideration.

Where a citizen, legal person or other organization has brought an administrative lawsuit before a People's Court and the People's Court has accepted the case according to law, he or it may not apply for administrative reconsideration.

#### Chapter IV Acceptance of Applications for Administrative Reconsideration

Article 17 Having received an application for administrative reconsideration, the administrative reconsideration organ shall examine the application within five days; when it finds that the application does not conform to the provisions of this Law, it shall decide not to accept the application and shall inform the applicant of the decision in writing; when it finds that the application conforms to the provisions of this Law but does not come under its jurisdiction, it shall inform the applicant to apply to the administrative reconsideration organ concerned.

With the exception of the provisions in the preceding paragraph, an application for administrative reconsideration is considered accepted on the date when the department in charge of legal work under the administrative reconsideration organ receives it.

Article 18 The local people's government at the county level that accepts an application for administrative reconsideration in accordance with the provisions in Paragraph 2 of Article 15 of this Law shall, within seven days from the date it receives the said application, transmit the application that comes under the jurisdiction of another administrative reconsideration organ in accordance with the provisions in Paragraph 1 of Article 15 of this law and inform the applicant of the matter. The administrative reconsideration organ that accepts the transmitted application shall deal with it in accordance with the provisions in Article 17 of this Law.

Article 19 In cases where laws or regulations stipulate that citizens, legal persons or other organizations apply for administrative reconsideration to the administrative reconsideration



organs before they can bring administrative lawsuits before the people's courts when they refuse to accept the decisions made after administrative reconsideration, if the administrative reconsideration organs decide not to accept the applications or fail to reply within the time limit for administrative reconsideration after they accept the applications, the citizens, legal persons or other organizations may bring administrative lawsuits before the people's courts according to law from the date they receive the notice that the administrative reconsideration organs decide not to accept their applications or within 15 days from the date the time limit for administrative reconsideration expires.

Article 20 When an administrative reconsideration organ refuses, without justifiable reasons, to accept the application for administrative reconsideration submitted by a citizen, legal person or other organization in accordance with law, the administrative organ at a higher level shall order it to accept the application; or, when necessary, the administrative organ at a higher level may accept the application directly.

Article 21 Specific administrative acts shall not be suspended during the period of administrative reconsideration; however, they may be suspended under the following circumstances:

1. The defending party to an application deems it necessary to suspend the action;
2. The administrative reconsideration organ deems it necessary to suspend the action;
3. The applicant apply for suspension of the action and the administrative reconsideration organ deems the application reasonable and decides to suspend the action; and
4. The law stipulates that the act be suspended

## Chapter V Decision Made After Administrative Reconsideration

Article 22 In principle, administrative reconsideration shall take the form of written examination; however, when the applicant requests or the departments in charge of legal work under an administrative reconsideration organ deems it necessary, investigation may be conducted among the organizations and persons concerned and the opinions of the applicant, the defending party to the application and the third party heeded.

Article 23 The department in charge of legal work under an administrative reconsideration organ shall, within seven days from the date it accepts an application for administrative reconsideration, transmit to the defending party a duplicate of the application, or a copy of the written record of an oral application for administrative reconsideration. The defending party shall, within 10 days from the date it receives the duplicate of the application or the copy of the written record of the oral application, submit a written reply, and the basis and other relevant materials on the strength of which it took the specific administrative act.

The applicant and the third party may have access to the written reply, the evidence, basis and other relevant materials supporting the specific administrative acts submitted by the defending

party, and the administrative reconsideration organ may not refuse to show them unless the reply, evidence, basis or other relevant materials involve State secrets, commercial secrets or personal privacy.

Article 24 In the process of administrative reconsideration, the defending party to an application may not, of his own, collect evidence from the applicant or from other organizations or individuals concerned.

Article 25 The applicant may withdraw his application before a decision is made after administrative reconsideration and after the applicant gives the reasons for the withdrawal. The process of administrative reconsideration shall be terminated when the application is withdrawn.

Article 26 When an applicant applies for administrative reconsideration, and at the same time for examination of the provisions listed in Article 7 of this Law, which comes under the jurisdiction of an administrative reconsideration organ, the said organ shall, within 30 days, handle the application according to law. Otherwise, the same organ shall, within seven days and according to statutory procedures, transmit the application to the administrative organ that has the authority to deal with it according to law, and the latter shall, within 60 days, handle it according to law. During the period in which the application is being handled, examination of a specific administrative act shall be suspended.

Article 27 If, when examining the specific administrative acts taken by the defending party to an application, the administrative reconsideration organ considers the basis of such acts illegitimate and if it has the authority to deal with the case, it shall do so within 30 days in accordance with law; if it does not have the authority to deal with the case, it shall, within seven days and according to statutory procedures, transmit the case to the State organ which has the authority to deal with the case in accordance with law. During the period in which the case is being handled, examination of the specific administrative acts shall be suspended.

Article 28 The department in charge of legal work under an administrative reconsideration organ shall examine the specific administrative acts taken by the defending party to an application and put forward suggestions. After the suggestions are approved by the leading member of the administrative reconsideration organ or adopted after collective discussion, a decision shall be made after administrative reconsideration according to the following provisions:

1. If the facts about the specific administrative acts are clearly established, the evidence is conclusive, the basis used is correct, the legal procedure is complied with, and the acts are appropriate, a decision for affirming the acts shall be made;
2. If the defending party to an application refuses to perform its statutory responsibilities, a decision shall be made for it to perform the responsibilities within a time limit; or
3. If a specific administrative act is taken in one of the following circumstances, a decision shall be made to have it nullified or changed or confirm that it is illegal; in that case, the defending party shall be ordered to take another specific administrative act within a time limit:

- (1) The main facts are not clear and essential evidence is inadequate;

- (2) The basis is used incorrectly;
- (3) Statutory procedures are violated;
- (4) Authority is exceeded or power is abused; or
- (5) The act is obviously inappropriate.

4. If the defending party refuses to submit, as required by provisions in Article 23 of this Law, its written reply, or the evidence, basis or other relevant material on the strength of which it took its specific administrative act, the said act shall be considered having no evidence or basis, and a decision shall be made to nullify it.

Where administrative reconsideration organ orders the defending party to take another specific administrative act, it may not take the same or basically the same specific administrative act on the basis of the same facts or reasons.

Article 29 When applying for administrative reconsideration, the applicant may also request administrative compensation. In case the administrative reconsideration organ believes that the request conforms to the provisions of the State Compensation Law and that compensation should be made, when it decides to have the specific administrative act nullified or changed or to confirm that it is illegal, it shall, at the same time, decide that the defending party make the compensation in accordance with law.

If the applicant does not request for administrative compensation when applying for administrative reconsideration, the administrative reconsideration organ while deciding, in accordance with law, to revoke or alter the punishment of a fine, or to revoke the specific administrative acts such as the illegal raising of funds, confiscation or collection of money or things of value, apportion of expenses, and sealing up, distraining, or freezing of property, shall, at the same time, order the defending party to return the property, to revoke such measures as sealing up, distraining, or freezing of property, or to pay an appropriate amount of money as compensation.

Article 30 Where a citizen, legal person or other organization believes that the specific administrative act taken by an administrative organ infringes upon his or its right of ownership in or right to the use of natural resources such as land, mineral resources, waters, forests, mountains or hills, grasslands, wasteland, tidal flats and sea areas, which he or it has acquired according to law, he or it shall first apply for administrative reconsideration; if he or it refuses to accept the decision made after administrative reconsideration, he or it may bring an administrative lawsuit before a People's Court according to law.

The decisions made after administrative reconsideration by the people's governments of provinces, autonomous regions or municipalities directly under the Central Government confirming the right of ownership in or the right to the use of natural resources such as land, mineral resources, waters, forests, mountains or hills, grassland, wasteland, tidal flats and sea areas, on the basis of the decisions made by the State Council or the people's governments of provinces, autonomous regions or municipalities directly under the Central Government regarding the survey, delimitation or readjustment of administrative division or regarding land requisition, are final.

Article 31 An administrative reconsideration organ shall make a decision after administrative reconsideration within 60 days from the date it accepts an application, except where the time limit for administrative reconsideration prescribed by law is less than 60 days. Where the circumstances are complicated and make it impossible to make a decision after administrative reconsideration within the prescribed time limit, the time limit may be extended with the approval by the leading member of the administrative reconsideration organ, and the applicant and the depending party to the application shall be informed of the matter; however, the extension may not exceed the maximum of 30 days.

When an administrative reconsideration organ makes a decision after administrative reconsideration, it shall prepare a written decision after administrative reconsideration, with an official seal affixed.

Once the written decision made after administrative reconsideration is delivered to the applicant and the defending party; it shall become legally effective.

Article 32 The defending party to the application shall carry out the decision made after administrative reconsideration.

Where the defending party refuses to carry out the decision made after administrative reconsideration or delays the carrying out of the decision without justifiable reasons, the administrative reconsideration organ or the relevant administrative organ at a higher level shall order it to carry out the decision within a time limit.

Article 33 Where an applicant neither brings a lawsuit before a People's Court at the expiration of a time limit nor carries out the decision made after administrative reconsideration or the final ruling on such a decision, the matter shall be handled in accordance with the following provisions, as the case may be:

1. A decision made after administrative reconsideration for affirming a specific administrative act shall be enforced according to law by the administrative organ that has the said act, or an application shall be made to a People's Court for enforcement; or
2. A decision made after administrative reconsideration for having a specific administrative act changed shall be enforced by the administrative reconsideration organ according to law, or an application shall be made to a People's Court for enforcement.

## Chapter IV Legal Responsibility

Article 34 Where an administrative reconsideration organ, in violation of the provisions of this Law and without justifiable reasons, refuses to accept an application for administrative reconsideration presented in accordance with law, to transmit the application as required by provisions, or to make a decision after administrative reconsideration within the statutory time limit, the persons who are directly in charge and the other persons who are directly responsible for

the violation shall be given administrative sanctions such as disciplinary warning, recording of a demerit or of a serious demerit according to law; if the said administrative reconsideration organ still refuses to accept the application for administrative reconsideration or to transmit the application as required by provisions after it is ordered to do so, and if serious consequences are caused, the said persons shall be given administrative sanctions such as demotion, dismissal from office and discharge from office and discharge from public service according to law.

Article 35 Any member of an administrative reconsideration organ who, in the course of administrative reconsideration, engages in malpractices for personal gain or is derelict or negligent of his duty shall be given administrative sanctions such as disciplinary warning, recording of a demerit or of a serious demerit according to law; if the consequences are serious, he shall be given administrative sanctions such as demotion, dismissal from office and discharge from public service according to law; if a crime is constituted, criminal responsibility shall be investigated according to law.

Article 36 Where the defending party to an application, in violation of the provisions of this Law, refuses to make a written reply or submit the evidence, basis and other relevant materials on the strength of which it takes the specific administrative act, or prevents in a disguised form, citizens, legal persons or other organizations from applying for administrative reconsideration according to law, the persons who are directly in charge and the other persons who are directly responsible for the violation shall be given administrative sanctions such as disciplinary warning, recording of a demerit or of a serious demerit according to law; where the said persons resort to frame-up or retaliation, they shall be given administrative sanctions such as demotion, dismissal from office and discharge from public service according to law; if a crime is constituted, criminal responsibility shall be investigated according to law.

Article 37 Where the defending party to an application refuses to carry out or, without justifiable reasons, delays carrying out the decision made after administrative reconsideration, the persons who are directly in charge and the other persons who are directly responsible for the violation shall be given administrative sanctions such as disciplinary warning, recording of a demerit or of a serious demerit according to law; if the said persons still refuse to carry out the decision after they are ordered to do so, they shall be given such administrative sanctions such as demotion, dismissal from office and discharge from public service according to law.

Article 38 Where the department in charge of legal work under an administrative reconsideration organ finds that officials of the organ refuse, without justifiable reasons, to accept an application for administrative reconsideration, or to make a decision after administrative reconsideration within the prescribed time limit, or that they engage in malpractices for personal gain, resort to retaliation or refuse to carry out a decision made after administrative reconsideration, etc., the department shall put forward suggestions to the said organ, which shall handle the case in accordance with the provisions of this Law, other relevant laws and administrative regulations.

## Chapter VII Supplementary Provisions

Article 39 When accepting an application for administrative reconsideration, the administrative reconsideration organ may not charge the applicant any fee. The expenses on administrative reconsideration shall be included in and guaranteed by the budget of the organ.

Article 40 The administrative reconsideration period shall be calculated and the administrative reconsideration documents shall be served in accordance with the provisions on time periods and service in the Civil Procedure Law.

The provisions of "five days" and "seven days" for administrative reconsideration periods in this Law refer to workdays, excluding public holidays and weekends.

Article 41 This Law shall be applicable to foreign nationals, stateless persons and foreign organizations that apply for administrative reconsideration within the territory of the People's Republic of China.

Article 42 In case of discrepancy between provisions on administrative reconsideration in law promulgated before this Law goes into effect and those of this Law, the provisions of this Law shall prevail.

Article 43 This Law shall go into effect as of October 1, 1999. The Regulations on Administrative Reconsideration, promulgated and revised by the State Council on December 24, 1990 and October 9, 1994 respectively, shall be annulled at the same time.

## **Administrative Permission Law of the People's Republic of China**

Adopted at the 4th Meeting of the Standing Committee of the Tenth National People's Congress on August 27, 2003 and promulgated by Order No.7 of the President of the People's Republic of China on August 28, 2003

### Contents

#### Chapter I General Provisions

#### Chapter II Institution of the Procedure for Administrative Permission

#### Chapter III Department Granting Administrative Permission

#### Chapter IV Procedures for Granting Administrative Permission

##### Section 1 Application and Acceptance

##### Section 2 Examination and Decision

##### Section 3 Time Limit

##### Section 4 Hearing

##### Section 5 Alteration and Extension

##### Section 6 Special Provisions

#### Chapter V Fees for Administrative Permission

#### Chapter VI Supervision and Inspection

#### Chapter VII Legal Responsibility

#### Chapter VIII Supplementary Provisions

#### Chapter I General Provisions

Article 1 This Law is enacted in accordance with the Constitution to standardize the institution of the procedure for, and the granting of, administrative permission, to protect the legitimate rights and interests of citizens, legal persons and other organizations, to safeguard public interests and

maintain public order, and to ensure and supervise the effective exercise of administration by administrative departments.

Article 2 For purposes of this Law, administrative permission means approval given to citizens, legal persons and other organizations for engaging in special activities by administrative departments on the basis, and upon examination according to law, of their applications.

Article 3 This Law is applicable to the institution of the procedure for, and the granting of, administrative permission.

This Law is not applicable to the examination and approval by the relevant administrative departments of such matters as personnel, financial and foreign-related affairs of other departments or of the institutions directly under the administration of the said departments.

Article 4 The procedure for administrative permission shall be instituted and administrative permission shall be granted in accordance with the statutory limits of power, scope, requirements and procedures.

Article 5 The procedure for administrative permission shall be instituted and administrative permission shall be granted in adherence to the principles of openness, fairness and impartiality.

Provisions on administrative permission shall be promulgated; and no provisions that are not promulgated shall be made the basis for the granting of administrative permission. The granting and outcome of administrative permission shall be publicized except where State secrets, business secrets and individual privacy are involved.

The applicants who meet the statutory requirements and standards shall have the equal right to obtain administrative permission according to law, and administrative departments shall not discriminate against any of them.

Article 6 Administrative permission shall be granted in adherence to the principle of meeting the convenience of people with greater efficiency and fine service.

Article 7 With regard to the granting of administrative permission by administrative departments, citizens, legal persons and other organizations shall have the right to make their statements and argue their cases; they shall have the right, in accordance with law, to apply for administrative reconsideration or bring an administrative suit; and they shall have the right to demand compensation according to law if their legitimate rights and interests are damaged due to the unlawful granting of administrative permission by administrative departments.

Article 8 Administrative permission obtained according to law by citizens, legal persons or other organizations shall be protected by law. No administrative departments shall, without authorization, change the administrative permission already in effect.

Where the laws, regulations or rules, on the basis of which administrative permission is granted, have been revised or abolished, or major changes have occurred in the objective circumstances, on the basis of which administrative permission is approved, administrative departments may, for the need of public interests and in accordance with law, alter or revoke the administrative permission



already in effect. Where, as a consequence, losses are caused to the property of citizens, legal persons or other organizations, administrative departments shall make them compensations according to law.

Article 9 Administrative permission obtained according to law shall not be transferred except where laws and regulations provide that it may be transferred according to statutory requirements and procedures.

Article 10 People's governments at or above the county level shall establish a sound system to supervise the granting of administrative permission by administrative departments and exercise strict supervision over and inspection of the granting of such permission by the said departments.

Administrative departments shall carry out effective supervision over the activities engaged in by citizens, legal persons and other organizations, to which administrative permission is granted.

## Chapter II Institution of the Procedure for Administrative Permission

Article 11 The procedure for administrative permission shall be instituted in adherence to the laws governing economic and social development and for the benefit of bringing into full play the enthusiasm and initiative of citizens, legal persons and other organizations, safeguarding public interests, maintaining public order and promoting the harmonious development of the economy, society and the ecological environment.

Article 12 The procedure for administrative permission may be instituted for the following matters:

- (1) matters relating to the special activities that directly involve State security, macro-economic control and protection of the ecological environment and that have a direct bearing on human health and the safety of people's lives and property, which are subject to approval in accordance with the statutory requirements;
- (2) matters relating to the development and utilization of limited natural resources, the allocation of public resources as well as access to the market of the special trades that have a direct bearing on public interests, etc., to which special rights need to be granted;
- (3) matters relating to the professions and trades that provide services to the public and that have a direct bearing on public interests, the qualifications and competence to be possessed by which, such as the special credibility, conditions and skills, need to be affirmed;
- (4) matters relating to the important equipment, facilities, products and articles that have a direct bearing on public security, human health, and the safety of people's lives and property, which need to be verified by means of inspection, test, quarantine, etc. and in accordance with technical standards and specifications;
- (5) matters relating to the establishment of an enterprise or other organization, the capacity of which as a subject needs to be affirmed; and

(6) other matters for which the procedure for administrative permission may be instituted, as provided for by laws and administrative regulations.

Article 13 For the matters specified in Article 12 of this Law which can be regulated by the following means, institution of the procedure for administrative permission may be exempted:

- (1) matters on which citizens, legal persons and other organizations can make decisions themselves;
- (2) matters which can effectively be regulated by the competitive mechanism of the market;
- (3) matters which the organizations of trades or intermediary bodies can manage through self-discipline; and
- (4) matters which administrative departments can solve by other administrative means such as supervision afterwards.

Article 14 With respect to the matters specified in Article 12 of this Law, the procedure for administrative permission may be instituted by law. Where such a law is not enacted, it may be instituted by administrative regulations.

When necessary, the State Council may institute the procedure for administrative permission by means of promulgating decisions. After implementation of such decisions, the State Council shall, except for matters to which provisional administrative permission is granted, without delay request the National People's Congress or its Standing Committee to enact laws, or formulate administrative regulations itself.

Article 15 Where laws or administrative regulations on the matters specified in Article 12 of this Law are not formulated, the procedure for administrative permission for them may be instituted by local regulations; where neither laws and administrative regulations nor local regulations are formulated, and where it is really necessary for administrative permission to be granted directly for the need of administration, the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government may institute provisional procedure for administrative permission in the form of rules. Where it is necessary to continue granting such provisional administrative permission at the expiration of a whole year, the said governments shall request the people's congresses or their standing committees at the corresponding levels to formulate local regulations.

No procedure for administrative permission in respect of the qualifications and competence of citizens, legal persons and other organizations, which are to be affirmed by the State in a unified manner, may be instituted in the form of local regulations or rules of the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government; nor shall the procedure for administrative permission in respect of the setting up and registration of enterprises and other organizations or administrative permission prior to their setting up and registration be instituted by the said governments in the said form. The procedure for administrative permission instituted by them shall not restrict the individuals or enterprises of other regions from engaging in production and business operation and providing services in the local areas, and shall not restrict the commodities of other regions from entering the local markets.

Article 16 Within the scope of the matters for which the procedure for administrative permission is instituted by law, specific provisions on the granting of such permission may be formulated in administrative regulations.

Within the scope of the matters for which the procedure for administrative permission is instituted by law or administrative regulations, specific provisions on the granting of such permission may be formulated in local regulations.

Within the scope of the matters for which the procedure for administrative permission is instituted by superordinate laws, specific provisions on the granting of such permission may be formulated in rules.

Additional procedure for administrative permission shall not be instituted in the specific provisions formulated in the regulations and rules for the granting of administrative permission for which the procedure is instituted by superordinate laws; and other requirements in violation of the superordinate laws shall not be added in the specific provisions on the requirements of administrative permission.

Article 17 With the exception of what is provided for in Articles 14 and 15 of this Law, no procedure for administrative permission shall be instituted in any other standardizing documents.

Article 18 When the procedure for administrative permission is instituted, provisions on the departments, requirements, procedures and time limit for the granting of such permission shall be formulated.

Article 19 Where, when drafting laws or regulations or when drafting rules of the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government, the drafting unit plans to institute the procedure for administrative permission, it shall solicit opinions by holding hearings or evaluation meetings or by other means, and shall explain to the formulating departments about the necessity for instituting the same, the impact it may possibly make on the economy and society as well as the opinions it has solicited and adopted.

Article 20 The department that institutes the procedure for administrative permission shall regularly make appraisal of the procedure instituted; and where it believes that matters can be solved by the means specified in Article 13 of this Law, it shall, without delay, revise or nullify the provisions on the institution of the same.

The department granting administrative permission may, when it thinks fit, make an appraisal of the granting of the administrative permission for which the procedure is already instituted and of the necessity of its existence, and report their comments and suggestions to the department that institutes the procedure for administrative permission.

Citizens, legal persons and other organizations may put forth their comments and suggestions regarding the institution of the procedure for, and the granting of, administrative permission to the departments that institute the procedure and grant the permission.

Article 21 Where the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government, in light of the economic and social development in their

respective administrative regions, believe that the economic matters for which the procedure for administrative permission is instituted in their administrative regulations can be solved by the means specified in Article 13 of this Law, they may, upon approval by the State Council, cease granting such permission within their own administrative regions.

### Chapter III Department Granting Administrative Permission

Article 22 Administrative permission shall be granted by an administrative department with the power of granting such permission within the limits of its statutory functions and powers.

Article 23 An organization with the functions of administering public affairs conferred by laws and regulations shall grant administrative permission in its own name and within the limits of the statutory powers. The provisions on administrative departments in this Law shall be applicable to such an empowered organization.

Article 24 An administrative department may, within the limits of its statutory functions and powers and in accordance with the provisions of laws, regulations and rules, entrust another administrative department with the granting of administrative permission. The entrusting department shall publicize the entrusted administrative department and the matters subject to the entrusted granting of administrative permission.

The entrusting administrative department shall be in charge of supervision over the granting of administrative permission by the entrusted administrative department, and shall bear legal responsibility for the consequences of such granting.

The entrusted administrative department shall, within the limits of the entrustment and in the name of the entrusting administrative department, grant administrative permission; it shall not entrust another organization or individual with the granting of administrative permission.

Article 25 Upon approval by the State Council, the people's government of a province, autonomous region or municipality directly under the Central Government may, on the principles of simplification, uniformity and efficiency, decide to let one administrative department exercise the power of administrative permission which is exercised by relevant administrative departments.

Article 26 Where matters of administrative permission need to be handled by more than one institution within an administrative department, the said department shall decide on one of the institutions for accepting applications for administrative permission and for serving the decisions on such permission itself.

Where administrative permission is granted separately by more than two departments of a local people's government according to law, the government may decide on one of the departments for accepting applications for administrative permission and for handling them itself after the relevant departments are informed of the matter and after they respectively put forth their opinions, or have the relevant departments to handle them jointly or in a concentrated way.

Article 27 In granting administrative permission, the administrative department shall not make the applicants such unjustifiable requests as to purchase goods it designates and to accept paid service.

In handling matters of administrative permission, the staff members of administrative departments shall not ask the applicants for money or things of value, accept or receive the same, or seek other benefits.

Article 28 The inspection, test and quarantine of the equipment, facilities, products and goods that have a direct bearing on public security, human health and the safety of people's lives and property shall, except where laws and administrative regulations provide that they be conducted by administrative departments, gradually be carried out by professional and technical organizations that meet the statutory requirements. The professional and technical organizations and their staff members concerned shall bear legal responsibility for the conclusions they draw from inspection, test and quarantine.

## Chapter IV Procedures for Granting Administrative Permission

### Section 1 Application and Acceptance

Article 29 Where citizens, legal persons and other organizations intend to engage in special activities for which they need to obtain administrative permission according to law, they shall submit their applications to administrative departments. Where forms need to be filled out for application, the administrative departments shall provide the applicants with such forms of application for administrative permission. The form of application shall not contain such particulars as are not directly related to the matters involved in the application for administrative permission.

An applicant may entrust his agent with the application for administrative permission, except where, in accordance with law, he is required to submit his application for administrative permission at the office place of an administrative department.

Application for administrative permission may be submitted in the form of letter, telegram, telex, fax, electronic data exchange, or e-mail.

Article 30 Administrative departments shall make public at their office places the matters, basis, requirements, quantity, procedure and time limit, as provided for by laws, regulations and rules, regarding relevant administrative permission, as well as the catalogue of all the materials required to be submitted and application forms for demonstration.

Where an applicant requests the administrative department to make explanation and interpretation for what it publicizes, the department shall do so accordingly and provide accurate and reliable information to the applicant.

Article 31 An applicant for administrative permission shall submit to the administrative department truthful relevant materials and provide true information, and shall be responsible for

the truthfulness of the matters of substance in the application materials. The administrative department shall not ask the applicant to submit technical data and other materials that have no relation to the matters for which administrative permission is applied for.

Article 32 With regard to the application submitted by an applicant for administrative permission, the administrative department shall handle it differently in light of the following circumstances:

- (1) where, in accordance with law, no administrative permission is necessary for the matters for which such permission is applied for, it shall directly inform the applicant that such an application is not to be accepted;
- (2) where, in accordance with law, the matters for which administrative permission is applied for do not fall within the scope of its functions and powers, it shall directly make the decision not to accept such an application and inform the applicant of the relevant administrative department to which the application should be submitted;
- (3) where there are errors in the application materials which can be corrected on the spot, it shall allow the applicant to make the correction on the spot;
- (4) where the application materials are not complete or not in conformity with the statutory form, it shall, on the spot or within five days, inform the applicant, all at once, of what needs to be supplemented or corrected; and if it fails to do so at the expiration of the time limit, the application shall be deemed to be accepted as of the date it receives the application materials; and
- (5) where the matters for which administrative permission is applied for fall within the scope of its functions and powers, the application materials are complete and in conformity with the statutory form, or the applicant submits the materials of application which are fully supplemented or corrected as it requires, it shall accept the application for administrative permission.

When the administrative department accepts or refuses to accept an application for administrative permission, it shall produce a written certificate with the special seal of the department affixed and the date clearly marked.

Article 33 Administrative departments shall establish and improve the relevant systems, introduce electronic administration, and publicize at their websites the matters which are subject to administrative permission, in order to make it convenient for the applicants to apply for administrative permission by such means as data cable; and they shall share information about administrative permission among themselves and thus increase their administrative efficiency.

## Section 2 Examination and Decision

Article 34 An administrative department shall examine the materials of application submitted by an applicant.

Where the application materials submitted by an applicant are complete and in conformity with the statutory form, on which the administrative department can make decision on the spot, it shall, on the spot, make the decision on administrative permission in writing.

Where, according to the statutory requirements and procedures, the matters of substance in the application materials need to be verified, the administrative department shall assign two or more of its staff members to conduct such verification.

Article 35 Where, according to law, an application for administrative permission needs to be examined by an administrative department at a lower level before it is submitted to an administrative department at a higher level for decision, the administrative department at a lower level shall, within the statutory time limit, submit its preliminary opinions based on the examination and the complete materials of application directly to the administrative department at a higher level. The administrative department at a higher level shall not ask the applicant to provide application materials again.

Article 36 Where in examining an application for administrative permission an administrative department finds a matter for administrative permission has a direct bearing on the vital interests of another person, it shall inform the interested person of the fact. The applicant and the interested person shall have the right to make their statements and argue their cases. The administrative department shall listen to the opinions of the applicant and the interested person.

Article 37 After examining an application for administrative permission, the administrative department shall, except where it can make a decision on such permission on the spot, make such a decision within the statutory time limit in adherence to the specified procedures.

Article 38 Where the application of an applicant is in conformity with the statutory requirements and standards, the administrative department shall, according to law, make a decision in writing on approving administrative permission.

Where, according to law, an administrative department makes a decision in writing on refusing to approve administrative permission, it shall state its reasons, and inform the applicant that he has the right, in accordance with law, to apply for administrative reconsideration or to bring an administrative suit.

Article 39 Where the administrative department makes the decision on approving administrative permission, for which a certificate of administrative permission is required to be issued, it shall issue to the applicant one of the following certificates of administrative permission affixed with the seal of the department:

- (1) a permit, license or other certificate of permission;
- (2) a qualification certificate, competence certificate or other certificate of quality;
- (3) approval documents or certifying documents of the administrative department; and
- (4) other certificates of administrative permission stipulated by laws and regulations.

Where the administrative department conducts inspection, test or quarantine, it may paste labels on, or affix the seal of inspection, test or quarantine to, the equipment, facilities, products or goods which pass the inspection, test or quarantine.

Article 40 The administrative department shall make known to the public the decisions it makes on approving administrative permission, and the public shall have the right to consult them.

Article 41 Where no regional restrictions are imposed on the use of administrative permission instituted by laws and administrative regulations, such permission obtained by applicants is effective throughout the country.

### Section 3 Time Limit

Article 42 An administrative department shall, except where it can make a decision on administrative permission on the spot, make such a decision within 20 days from the date it accepts an application for administrative permission. Where it cannot do so within 20 days, it may have an extension of 10 days upon approval by the leading member of the department, and shall inform the applicant of the reasons for extension. However, where laws and regulations provide otherwise, the provisions there shall prevail.

Where, according to the provisions in Article 26 of this Law, applications for administrative permission are handled in a unified manner, jointly, or in a concentrated way, the time for such handling shall not exceed 45 days; and where such handling cannot be wound up within 45 days, an extension of 15 days may be allowed upon approval by the leading member of the people's government at the corresponding level, and the applicant shall be informed of the reasons for extension.

Article 43 Where, according to law, an application for administrative permission needs to be examined by an administrative department at a lower level before it is submitted to an administrative department at a higher level for decision, the administrative department at a lower level shall wind up the examination within 20 days from the date it accepts the application. However, where laws and regulations provide otherwise, the provisions there shall prevail.

Article 44 After the administrative department makes the decision on approving administrative permission, it shall, within 10 days from the date the decision is made, issue a certificate of administrative permission to or serve it on the applicant, or paste labels or affix the seal of inspection, test or quarantine.

Article 45 Where, according to law, a decision on administrative permission to be made by an administrative department requires hearing, public bidding, auction, inspection, test, quarantine, authentication or expert evaluation, the time thus needed shall not be reckoned in the time limit specified by this Section. The administrative department shall inform the applicant in writing of the time needed.

### Section 4 Hearing

Article 46 The administrative department shall make known to the general public, and hold hearings on, the matters for the granting of administrative permission which, according to the provisions of laws, regulations or rules, need hearing, or other matters of vital importance involving public interests for the granting of administrative permission which the administrative department believes need hearing.



Article 47 Where administrative permission directly involves the vital interests between an applicant and another person, the administrative department shall, before making the decision on administrative permission, inform the applicant and the interested person that they have the right to request hearing; and where the applicant and the interested person, within five days from the date they are informed of such right, submit their application for hearing, the administrative department shall make arrangements for the hearing within 20 days.

The applicant and the interested person shall not bear the expenses for the hearing arranged by the administrative department.

Article 48 A hearing shall be conducted in accordance with the following procedures:

(1) The administrative department shall, seven days before holding the hearing, inform the applicant and the interested person of the time and the venue the hearing is to be held, and when necessary, make the time and venue known to the public;

(2) The hearing shall be held openly;

(3) The administrative department shall appoint a person, other than its staff member who examines the application for administrative permission, to chair the hearing, and where the applicant or the interested person believes that the chairperson has a direct interest in the matter for administrative permission, he shall have the right to apply for the chairperson's withdrawal;

(4) During hearing, the staff member who examines the application for administrative permission shall provide the evidence and reasons for his opinions, and the applicant and the interested person may provide their evidence, and argue their cases and cross-examine the evidence provided by the said staff member; and

(5) A record of the hearing shall be made in writing and be signed by, or affixed with the seals of, the participants at the hearing after they confirm that there are no mistakes in it.

The administrative department shall, on the basis of the record of the hearing, make its decision on administrative permission.

## Section 5 Alteration and Extension

Article 49 Where a person granted the permission asks to alter the matters for which administrative permission is obtained, he shall submit an application to the administrative department that makes the decision on administrative permission; and where the application is in conformity with statutory requirements and standards, the administrative department shall go through the formalities for alteration according to law.

Article 50 Where a person granted the permission needs an extension of the term of validity of the administrative permission obtained according to law, he shall, 30 days before the expiration of the said term of validity, make an application to the administrative department that makes the decision on administrative permission. However, where laws, regulations and rules provide otherwise, the provisions there shall prevail.

The administrative department shall, on the basis of the application of the person granted the permission, make its decision on whether to approve the extension before the expiration of the term of validity of the administrative permission; and where no such decision is made at the expiration of the time limit, the extension shall be regarded as being approved.

## Section 6 Special Provisions

Article 51 Where there are provisions in this Section on the procedures for the granting of administrative permission, they shall be applied; and where there are no such provisions in this Section, the relevant provisions in this Chapter shall be applied.

Article 52 The provisions in relevant laws and administrative regulations shall be applicable to the procedures for the granting of administrative permission by the State Council.

Article 53 For the granting of administrative permission to the matters specified in Subparagraph 2 of Article 12 of this Law, the administrative department shall make its decision through the forms of fair competition such as public bidding and auction. However, where laws and administrative regulations provide otherwise, the provisions there shall prevail.

The specific procedures for the administrative department to make its decision on administrative permission through such forms as public bidding and auction shall be enacted in accordance with the provisions of relevant laws and administrative regulations.

After the administrative department decides on the winner of a bid or the vendee in accordance with the procedures for public bidding or auction, it shall make the decision on approving administrative permission, and shall issue the certificate of administrative permission to the winner or vendee according to law.

Where the administrative department, in violation of the provisions of this Article, does not adopt public bidding or auction or goes against the procedures for public bidding or auction, thus infringing on the legitimate rights and interests of an applicant, the applicant may, in accordance with law, apply for administrative reconsideration or bring an administrative suit.

Article 54 For the granting of administrative permission to the matters specified in Subparagraph 3 of Article 12 of this Law, which involves endowing citizens with special qualifications and for which national examinations should be conducted according to law, the administrative department shall make its decision on administrative permission on the basis of the results of examinations and other statutory requirements; and for the granting of special qualifications and competence of legal persons or other organizations, it shall make its decision on the basis of the result of the appraisal regarding the composition of the professional personnel, the technological qualifications, operational achievements and managerial level of the applicants. However, where laws and administrative regulations provide otherwise, the provisions there shall prevail.

Examinations taken by citizens for special qualifications shall be arranged by administrative departments or organizations of trades according to law, and shall be conducted openly. The administrative departments or the organizations of trades shall, in advance, publicize the qualifications and measures for registration and the subjects and outlines for examination.

However, no compulsory pre-examination training for qualification examination shall be arranged and no teaching materials or supplementary materials shall be designated.

Article 55 For the granting of administrative permission to the matters specified in Subparagraph 4 of Article 12 of this Law, which are subject to inspection, test or quarantine according to technical standards and specifications, as is required by law, the administrative department shall, based on the results of the inspection, test or quarantine, make its decision on such permission.

To conduct inspection, test or quarantine, the administrative department shall, within five days from the date it accepts an application, assign two or more of its staff members to do the job in accordance with the technical standards and specifications. Where the administrative department can, dispensing with further technical analysis of the results of inspection, test or quarantine, determine whether the equipment, facilities, products or goods are in conformity with the technical standards and specifications, it shall make its decision on administrative permission on the spot.

Where the administrative department, based on the results of inspection, test or quarantine, decides not to approve administrative permission, it shall state clearly in writing the technical standards and specifications on the basis of which it makes such a decision.

Article 56 For the granting of administrative permission to the matters specified in Subparagraph 5 of Article 12 of this Law, for which the application materials submitted by the applicant are complete and in conformity with the statutory forms, the administrative department shall make an entry of the matters in a register on the spot. Where matters of substance of the application materials need to be verified, the administrative department shall conduct the verification in accordance with the provisions in Subparagraph 3 of Article 34 of this Law.

Article 57 Where the number of matters to which administrative permission can be granted is restricted and the applications submitted by two or more applicants are in conformity with the statutory requirements and standards, the administrative department shall make its decision on approving administrative permission in sequence of time at which it accepts such applications for administrative permission. However, where laws and administrative regulations provide otherwise, the provisions there shall prevail.

## Chapter V Fees for Administrative Permission

Article 58 Administrative departments shall not collect any fees for the granting of administrative permission or for their supervision over and inspection of the matters to which administrative permission has been granted. However, where laws and administrative regulations provide otherwise, the provisions there shall prevail.

Administrative departments shall not collect fees for the forms of application for administrative permission.

The funds needed by administrative departments for the granting of administrative permission shall be incorporated into their own budgets, which shall be guaranteed by the governments at the corresponding levels, and verified and allocated in accordance with the budgets approved.

Article 59 Where administrative departments collect fees for the granting of administrative permission in accordance with laws and administrative regulations, they shall do so in conformity with the publicized statutory items and rates; and all the fees they collect shall be turned over to the State Treasury, and no departments or individuals shall, in any form, withhold or misappropriate them, or divide them in private or do so in disguised form. No finance departments shall, in any form, return to the administrative departments the fees collected by them for the granting of administrative permission, or do so in disguised form.

## Chapter VI Supervision and Inspection

Article 60 The administrative department at a higher level shall exercise rigid supervision over and inspection of the granting of administrative permission by the administrative department at a lower level, in order to put to right, in good time, violations of laws committed in the granting of administrative permission.

Article 61 The administrative department shall establish a sound supervisory system and perform its supervisory duties through checking the materials reflecting the activities conducted by the persons granted the permission in respect of the matters to which administrative permission has been granted.

After exercising, in accordance with law, supervision over and inspection of the activities conducted by the persons granted the permission in respect of the matters to which administrative permission has been granted, the administrative department shall record the supervision and inspection exercised as well as the problems handled, and the record shall be placed on file after the supervisors and inspectors sign it. The public shall have the right to consult the records of supervision and inspection kept by the administrative department.

The administrative department shall create conditions to interconnect with the persons granted the permission and the computer file systems of the relevant administrative departments, in order to check the activities conducted by the persons granted the permission in respect of the matters to which administrative permission has been granted.

Article 62 The administrative department may, according to law, inspect, examine or test the samples of the products manufactured or dealt in by the persons granted the permission and conduct on-the-spot inspection of the places where the products are manufactured or dealt in. When conducting inspection, the administrative department may, according to law, consult the relevant materials or request the persons granted the permission to submit such materials; and the said persons shall provide relevant information and materials truthfully.

The administrative department shall, in accordance with the provisions of laws and administrative regulations, conduct regular inspection of the important equipment and facilities that have a direct bearing on public security, human health and the safety of people's lives and property. With respect to those that pass the inspection, it shall issue appropriate documents certifying the fact.

Article 63 When exercising supervision and inspection, the administrative department shall not hinder the normal production and operation of the persons granted the permission, nor ask the said persons for money or things of value, or receive or accept the same, or seek other benefits.

Article 64 Where a person granted the permission, in violation of law and in an area beyond the jurisdiction of the administrative department that makes the decision on administrative permission, engages in activities in respect of the matters to which administrative permission has been granted, the administrative department in the area where such violation takes place shall, according to law, send a copy of the facts of violation committed by the person granted the permission and the results of its handling of the violation to the administrative department that makes the decision on administrative permission.

Article 65 Individuals and organizations that find activities conducted, in violation of law, in respect of the matters to which administrative permission has been granted shall have the right to report such activities to administrative departments, which shall, without delay, check the facts and handle the violation.

Article 66 Where a person granted the permission fails to perform his obligations of developing and utilizing natural resources according to law or his obligations of utilizing public resources according to law, the administrative department shall instruct him to set it right within a time limit; and if he fails to do so within the specified time limit, the administrative department shall deal with the case in accordance with the provisions of relevant laws and administrative regulations.

Article 67 The person granted the permission that has obtained administrative permission for access to the market of a special trade which has a direct bearing on public interests shall, in compliance with the service standard prescribed and the rates fixed by the State as well as the requirements prescribed by the administrative department according to law, provide to users safe, convenient and steady service at reasonable rates, and shall perform his obligation of providing universal service; and without approval by the administrative department that makes the decision on administrative permission, the said person shall not suspend business or close down.

Where a person granted the permission fails to perform the obligations specified in the preceding paragraph, the administrative department shall instruct him to set it right within a time limit or, according to law, take effective measures to see that he performs the obligations.

Article 68 With respect to the important equipment and facilities that have a direct bearing on public security, human health and the safety of people's lives and property, the administrative department shall see that the units that make the design of, manufacture, install or use such equipment and facilities to establish an appropriate self-inspection system.

Where, in conducting supervision and inspection, the administrative department discovers that in the important equipment and facilities that have a direct bearing on public security, human health

and the safety of people's lives and property there exist hidden dangers threatening safety, it shall instruct the units to cease manufacturing, installing and using the same, and shall instruct the units that make the design of, manufacture, install or use the same to rectify immediately.

Article 69 In any of the following cases, the administrative department that makes the decision on administrative permission or its immediate superior may, based on the request of the interested person or on its own functions and powers, revoke such permission:

- (1) where the decision on approving administrative permission is made by staff members of the administrative department who abuse their powers or neglect their duties;
- (2) where the decision on approving administrative permission is made beyond the statutory functions and powers;
- (3) where the decision on approving administrative permission is made in contravention of the statutory procedures;
- (4) where approval of administrative permission is given to an applicant that is not qualified for application or does not meet the statutory requirements; and
- (5) other cases where administrative permission may be revoked according to law.

The administrative permission obtained by a person by such illegitimate means as deception and bribery shall be revoked.

Where revocation of administrative permission in accordance with the provisions of the preceding two paragraphs may cause great damages to public interests, such permission shall not be revoked.

Where revocation of administrative permission in accordance with the provisions in the first paragraph of this Article causes damages to the legitimate rights and interests of the person granted the permission, compensation shall be made by the administrative department according to law. Where administrative permission is revoked in accordance with the provisions in the second paragraph of this Article, the benefits obtained by the person granted the permission through such permission shall not be protected.

Article 70 In any of the following cases, the administrative department shall, in accordance with law, go through the formalities for cancelling the relevant administrative permission:

- (1) where the term of validity for administrative permission is not extended at the expiration of the term;
- (2) where the citizen to whom administrative permission for special qualifications is granted dies or loses the disposing capacity;
- (3) where the status of a legal person or other organization is terminated according to law;
- (4) where, in accordance with law, administrative permission is revoked or withdrawn, or the certificate of such permission is revoked;

(5) where matters for which administrative permission has been obtained cannot be undertaken due to force majeure; and

(6) other cases where administrative permission should be revoked as provided for by laws and regulations.

## Chapter VII Legal Responsibility

Article 71 Any procedure for administrative permission instituted by a department in violation of the provisions in Article 17 of this Law, the relevant department shall instruct the department that institutes such procedure to rectify, or have the procedure terminated according to law.

Article 72 Where an administrative department or its staff member, in violation of the provisions of this Law, does one of the following, its/his immediate superior or the supervisory department shall instruct it/him to rectify; and if the circumstances are serious, the persons directly in charge and the other persons directly responsible shall be given administrative sanctions according to law:

(1) failing to accept an application for administrative permission that is in conformity with the statutory requirements;

(2) failing to publicize at the office place the materials which should be publicized according to law;

(3) in the process of accepting, examining and deciding on administrative permission, failing to perform the statutory obligation of informing the applicant and the interested person of the right to request hearing;

(4) in the case where the application materials submitted by the applicant are not complete or not in conformity with the statutory form, failing to inform the applicant, all at once, of what needs to be supplemented or corrected;

(5) failing to state its/his reasons, according to law, for refusing to accept an application for administrative permission or for refusing to approve such permission; and

(6) failing to hold hearings as is required by law.

Article 73 Where the staff member of an administrative department, when handling matters of administrative permission or exercising supervision and inspection, asks another person for money or things of value, or receives or accepts the same, or seeks other benefits, which constitutes a crime, he shall be investigated for criminal responsibility according to law; and if the case is not serious enough to constitute a crime, he shall be given administrative sanctions according to law.

Article 74 Where, in granting administrative permission, an administrative department does one of the following, it shall be instructed by its immediate superior or the supervisory department to rectify, and the persons directly in charge and the other persons directly responsible shall be given

administrative sanctions according to law; and if a crime is constituted, criminal responsibility shall be investigated according to law:

(1) giving approval of administrative permission to an applicant that does not meet the statutory requirements, or making a decision on approving administrative permission beyond its statutory functions and powers;

(2) refusing to give approval of administrative permission to an applicant that meets the statutory requirements, or failing to make a decision on approving administrative permission within the statutory time limit; and

(3) failing to make a decision, through public bidding, auction or examination, on approving administrative permission on the basis of the outcome of public bidding and auction or the examination results, as is required by law, or refusing to make the decision on such basis.

Article 75 Where, when granting administrative permission, an administrative department collects fees without authorization or in contravention of the statutory items and rates, its immediate superior or the supervisory department shall instruct it to return the fees illegally collected; and the persons directly in charge and the other persons directly responsible shall be given administrative sanctions according to law.

Where the fees collected according to law for granting administrative permission are withheld, misappropriated, divided in private or done so in disguised form, such fees shall be recovered; the persons directly in charge and the other persons directly responsible shall be given administrative sanctions according to law; and if a crime is constituted, criminal responsibility shall be investigated according to law.

Article 76 Where an administrative department grants administrative permission in violation of law and thus causes damages to the rights and interests of the person concerned, it shall make compensation in accordance with the provisions of the Law on State Compensation.

Article 77 Where an administrative department does not perform its duties of supervision according to law or fails to perform such duties effectively, thus serious consequences ensue, its immediate superior or the supervisory department shall instruct it to rectify, and the persons directly in charge and the other persons directly responsible shall be given administrative sanctions according to law; and if a crime is constituted, criminal responsibility shall be investigated according to law.

Article 78 Where, when applying for administrative permission, an applicant conceals relevant information or provides false application materials, the administrative department shall refuse to accept the application or to approve such permission, and shall give a disciplinary warning to the applicant; and if the matters for which administrative permission is applied for are ones that have a direct bearing on public security, human health and the safety of people's lives and property, the applicant shall not apply for administrative permission for the same matters again within one year.

Article 79 Where a person obtains administrative permission by such illegitimate means as deception and bribery, the administrative department shall impose administrative penalties on



him; if the matters for which administrative permission is obtained are ones that have a direct bearing on public security, human health and the safety of people's lives and property, the applicant shall not apply for administrative permission for the same matters again within three years, and if a crime is constituted, the said person shall be investigated for criminal responsibility according to law.

Article 80 Where a person granted the permission does one of the following, the administrative department shall impose administrative penalties on him according to law; and if a crime is constituted, he shall be investigated for criminal responsibility according to law:

- (1) altering, selling, leasing out or lending the certificate of administrative permission, or illegally transferring such permission in other forms;
- (2) engaging in activities beyond the limits of administrative permission;
- (3) concealing relevant information from, providing false materials to, or refusing to provide truthful materials reflecting its activities to, the administrative department in charge of supervision and inspection; and
- (4) committing other illegal acts specified in laws, regulations and rules.

Article 81 Where a citizen, legal person or other organization, without obtaining administrative permission, engages in activities for which administrative permission should be obtained according to law, the administrative department shall, in accordance with law, adopt measures to stop such activities, and impose administrative penalties on the citizen, legal person or other organization according to law; and if a crime is constituted, criminal responsibility shall be investigated according to law.

## Chapter VIII Supplementary Provisions

Article 82 The time limit for the granting of administrative permission by an administrative department specified in this Law is counted by the working days, excluding the statutory festivals and holidays.

Article 83 This Law shall go into effect as of July 1, 2004.

The provisions on administrative permission formulated prior to implementation of this Law shall be checked up on by the formulating departments in accordance with the provisions of this Law; and beginning from the date this Law goes into effect, implementation of those provisions that are not in conformity with the provisions of this Law shall cease.

# **Law of the People's Republic of China on State Compensation**

Adopted at the Seventh Meeting of the Standing Committee of the Eighth National People's Congress and promulgated by Order No. 23 of the President of the People's Republic of China on May 12, 1994

## Contents

### Chapter I General Provisions

### Chapter II Administrative Compensation

#### Section 1 Scope of Compensation

#### Section 2 Claimants to Compensation and Organs Liable for Compensation

#### Section 3 Compensatory Procedures

### Chapter III Criminal Compensation

#### Section 1 Scope of Compensation

#### Section 2 Claimants to Compensation and Organs Liable for Compensation

#### Section 3 Compensatory Procedures

### Chapter IV Forms and Assessment of Compensation

### Chapter V Other Provisions

### Chapter VI Supplementary Provisions

## Chapter I General Provisions

Article 1 This Law is formulated in accordance with the Constitution with a view to safeguarding the right of citizens, legal persons and other organizations to State compensation according to law, and promoting the exercise by State organs of their functions and powers according to law.

Article 2 Where State organs or State functionaries, in violation of the law, abuse their functions and powers infringing upon the lawful rights and interests of the citizens, legal persons and other organizations, thereby causing damage to them, the victims shall have the right to State compensation in accordance with this Law.

Compensation by the State shall be carried out by the organs liable for compensation as stipulated by this Law.

## Chapter II Administrative Compensation

### Section 1 Scope of Compensation

Article 3 The victim shall have the right to compensation if an administrative organ or its functionaries, in exercising their administrative functions and powers, commit any of the following acts infringing upon the right of the person of a citizen:

- (1) Detaining a citizen in violation of the law or unlawfully taking compulsory administrative measures in restraint of his personal freedom;
- (2) Unlawfully taking a citizen into custody or depriving him of his right of the person by other unlawful means;
- (3) Using or instigating violence such as beating one up, thereby causing bodily injury or death to a citizen;
- (4) Unlawfully using weapons or police restraint implements, thereby causing bodily injury or death to a citizen; or
- (5) Other unlawful acts causing bodily injury or death to a citizen.

Article 4 The victim shall have the right to compensation if an administrative organ or its functionaries, in exercising their functions and powers, commit any of the following acts infringing upon property right:

- (1) Illegally inflicting administrative sanctions such as imposition of fines, revocation of certificates and licences, ordering suspension of production and business, or confiscation of property;
- (2) Illegally implementing compulsory administrative measures such as sealing up, distraining or freezing property;
- (3) Expropriating property or apportioning expenses in violation of the provisions of the State; or
- (4) Other illegal acts causing damage to property.

Article 5 The State shall not be liable for compensation in any of the following circumstances:

- (1) Individual acts of a functionary of an administrative organ, which have nothing to do with the exercise of his functions and powers;
- (2) Damage arisen from acts done by citizens, legal persons or other organizations themselves; or
- (3) Other circumstances provided by law.

### Section 2 Claimants to Compensation and Organs Liable for Compensation

Article 6 Victimized citizens, legal persons or other organizations shall have the right to demand compensation.

In case of death of a victim, his heirs or other relatives in maintenance relationship with him shall have the right to demand compensation.

In case of termination of a victimized legal person or other organization, the legal person or other organization that succeeds to the former's rights shall have the right to demand compensation.

Article 7 Where an administrative organ and its functionaries, in exercising their administrative powers, infringe upon the lawful rights and interests of a citizen, a legal person or other organizations, thereby causing damage to them, the administrative organ shall be the organ liable for compensation.

Where two or more than two administrative organs in jointly exercising their administrative functions and powers infringe upon the lawful rights and interests of a citizen or a legal person or other organizations, thereby causing damage to them, the administrative organs jointly exercising their administrative functions and powers shall be the organs jointly liable for compensation.

Where an organization in exercising the administrative powers conferred on it by law, rules and regulations infringe upon the lawful rights and interests of a citizen or a legal person or other organizations, thereby causing damage to them, the empowered organization shall be the organization liable for compensation.

Where an organization or an individual, in exercising the administrative powers entrusted to it or him by an administrative organ, infringes upon the lawful rights and interests of a citizen or a legal person or other organizations, thereby causing damage to them, the administrative organ that did the entrustment shall be the organ liable for compensation.

Where an organ liable for compensation has been abolished, the administrative organ that continues to exercise the former's functions and powers shall be the organ liable for compensation; if there is no administrative organ that continues to exercise the former's functions and powers, the administrative organ that abolished the former organ shall be the organ liable for compensation.

Article 8 If reconsideration of a case has been made, the administrative organ that first did the tortious act shall be the organ liable for compensation; however, if the outcome of the reconsideration aggravates the damage, the organ undertaking the reconsideration of the case shall carry out its compensatory obligations as regards the increased portion of damages.

### Section 3 Compensatory Procedures

Article 9 An organ liable for compensation shall, after confirmation according to law of its involvement in any of the circumstances stipulated in Articles 3 and 4 of this Law, make the compensation.

A claimant who demands compensation shall first apply to the organ liable for the compensation, or may make demands for it simultaneously when applying for administrative reconsideration of the case or when bringing an administrative action.

Article 10 A claimant to compensation may demand compensation from any of the organs jointly liable for it, and the organ approached by him for the purpose shall first make the compensation.

Article 11 A claimant to compensation may, in light of the difference in nature of the damage suffered, make separate claims simultaneously for compensation of the damages.

Article 12 For the purpose of claiming damages, an application in writing shall be made, giving the following particulars:

- (1) Name, sex, age, work unit and address of the victim; if the victim is a legal person or other organization, its name and address as well as the name and post of its legal representative or of the person chiefly responsible for the entity;
- (2) Concrete statement of the claim, factual grounds and reasons; and
- (3) Date, month and year of the application.

If the claimant has true difficulty in writing an application, he may entrust another person with its writing, or may make the application orally, which shall be transcribed and put into the record by the organ liable for compensation.

Article 13 The organ liable for compensation shall, within two months from the date of receiving the application, pay the compensation in accordance with the provisions of Chapter IV of this Law. If payment has not been made within this period, or if the claimant is not satisfied with the amount of compensation, he may bring a suit in a people's court within three months from the date of expiration of the period.

Article 14 The organ liable for compensation shall, after making the compensation, charge its functionaries, entrusted organizations or individuals who have been intentional or grossly negligent in the matter, to bear part or the whole of the compensatory expenses.

Those who are responsible for the matter and have been intentional or grossly negligent shall be given administrative sanctions by the relevant organ in accordance with law; if a crime has been constituted, they shall, according to law, be investigated for criminal responsibility.

### Chapter III Criminal Compensation

#### Section 1 Scope of Compensation

Article 15 The victim shall have the right to compensation if an organ in charge of investigatory, procuratorial, judicial or prison administration work, or its functionaries, infringe upon his right of the person in the exercise of its functions and powers in any of the following circumstances:

- (1) Wrong detention of a person without incriminating facts or proof substantiating a strong suspicion of the commission of a crime;

- (2) Wrong arrest of a person without incriminating facts;
- (3) Innocence is found in a retrial held in accordance with the procedure of trial supervision, but the original sentence has already been executed;
- (4) Extortion of a confession by torture or causing bodily injury or death to a citizen by using or instigating the use of violence such as beating one up; or
- (5) Causing bodily injury or death to a citizen by the unlawful use of weapons or police restraint implements.

Article 16 The victim shall have the right to compensation if an organ in charge of investigatory, procuratorial, judicial or prison administration work, or its functionaries, infringe upon property rights in any of the following circumstances:

- (1) Unlawfully taking measures such as sealing up, distraining, freezing or recovering a property; or
- (2) Innocence is found in a retrial held in accordance with the procedure of trial supervision, but the fine or confiscation of property in the original sentence has already been executed.

Article 17 The State shall not be liable for compensation in any of the following circumstances:

- (1) The taking into custody or sentencing being due to a citizen's own intentionally made false statements or fabricated evidence of guilt;
- (2) The person taken into custody being one not liable for criminal responsibility in accordance with Articles 14 and 15 of the Criminal Law;
- (3) The person taken into custody being one who shall not be investigated for criminal responsibility in accordance with Article 11 of the Criminal Procedure Law;
- (4) Individual acts of functionaries of organs in charge of investigatory, procuratorial, judicial or prison administration work of the State, which have nothing to do with the exercise of their functions and powers;
- (5) Damage being caused by intentional acts of a citizen such as self-wounding and self-mutilation; or
- (6) Other circumstances as stipulated by law.

## Section 2 Claimants to Compensation and Organs Liable for Compensation

Article 18 Claimants to compensation shall be determined in accordance with the provisions of Article 6 of this Law.

Article 19 If an organ in charge of investigatory, procuratorial, judicial or prison administration work, or its functionaries, infringe upon the rights and interests of a citizen, a legal person, or other organizations, in the exercise of its functions and powers, thereby causing damage to the victims, that organ shall be the organ liable for compensation.

If a person is wrongly detained without incriminating facts nor proof substantiating a strong suspicion of the commission of a crime, the organ deciding on the detention shall be the organ liable for compensation.

If a person is wrongly arrested without incriminating facts, the organ deciding on the arrest shall be the organ liable for compensation.

If a person is adjudged not guilty in a retrial, the people's court passing the originally effective sentence shall be the organ liable for compensation. If a person is adjudged not guilty by a court of the second instance, the lower court passing the original sentence and the organ deciding on the arrest shall be the organs jointly liable for compensation.

### Section 3 Compensatory Procedure

Article 20 An organ liable for compensation shall pay the compensation if its involvement in any of the circumstance stipulated in the provisions of Articles 15 and 16 of this Law has been lawfully confirmed.

If a demand for confirmation of the presence of one of the circumstances stipulated in the provisions of Articles 15 and 16 of this Law has been made by a claimant to compensation and is not satisfied by the organ to which the demand was made, the claimant to compensation shall have the right to bring an appeal.

A claimant to compensation shall first apply to the organ liable for compensation in making a demand for it.

The provisions of Articles 10, 11 and 12 of this Law shall be applicable to the compensatory procedure.

Article 21 An organ liable for compensation shall pay compensation in accordance with the provisions of Chapter IV of this Law within two months from the date of receiving the application; if payment is not made within the period, or if the claimant to compensation is not satisfied with the sum of compensation, he may apply for reconsideration to an organ at the next higher level within thirty days from the date of expiration of the period.

If the organ liable for compensation is a people's court, the claimant to compensation may, in accordance with the provisions of the preceding paragraph, apply to the compensation commission of a people's court at the next higher level for a decision on compensation.

Article 22 An organ undertaking the reconsideration shall decide the matter within two months from the date of receiving the application.

A claimant to compensation who refuses to accept the outcome of the reconsideration, may, within thirty days from the date of receiving the decision, apply for a decision on compensation to the compensation commission of the people's court at the same level in the locality where the organ that attended to the reconsideration is situated; if the latter organ has made no decision within the period prescribed, the claimant to compensation may, within thirty days from the expiration of the

period, apply for a decision to the compensation commission of the people's court at the same level in the locality where the organ undertaking the reconsideration is situated.

Article 23 People's courts at or above the intermediate level shall establish compensation commission composed of three to seven of their judges.

In making decisions on compensations, compensation commissions shall implement the principle of the minority subordinating to the majority.

Decisions made by a compensation commission are legally effective, and must be implemented.

Article 24 An organ liable for compensation shall, after compensating the damage, recover part, or the whole of the compensation expenses from its functionaries who are involved in any of the following circumstances:

- (1) Circumstances stated in Items 4 and 5 of Article 15 of this Law; or
- (2) Embezzlement and bribe-taking, malpractice for personal ends, or twisting the law in the handling of cases. Persons responsible for their involvement in the circumstances as stated in Items 1 and 2 of the preceding paragraph shall be given administrative sanctions by the relevant organ according to law; if a crime is constituted, criminal responsibility shall be investigated according to law.

#### Chapter IV Forms and Assessment of Compensation

Article 25 State compensation shall take the form of payment of damages in the main.

If the property is able to be returned or its original condition is able to be restored, the property shall be returned or its original condition restored.

Article 26 If freedom of the person of a citizen is infringed, compensatory payment for each day shall be assessed in accordance with the State average daily pay of staff and workers in the previous year.

Article 27 If a citizen's right to life and health is infringed upon, compensatory payment shall be assessed in accordance with the following provisions:

- (1) In the case of bodily injury, medical expenses as well as compensation for loss in income due to missed working time shall be paid. Daily compensation for the loss in income shall be assessed in accordance with the State average daily pay of staff and workers in the previous year, the maximum shall be five times the State average yearly pay of staff and workers in the previous year;
- (2) In the case of loss of part or the whole of working capability, medical expenses and disability compensation shall be paid, the latter to be determined in accordance with the degree of working capability lost. Maximum amount of compensation for partial loss of working capability shall be ten times the State average yearly pay of staff and workers in the previous year, and that for total



loss, twenty times, in which case living expenses shall too be paid to persons who have no working capability and have been supported by the disabled; or

(3) If death results, compensation for death and funeral expenses shall be paid, the total amount shall be twenty times the State average yearly pay of staff and workers in the previous year. Living expenses shall too be paid to those who have no working capability and have been supported by the deceased in his lifetime.

The standard for payment of living expenses provided in Items 2 and 3 in the preceding paragraph shall be handled by using for reference relevant provisions for relief of the local departments of civil affairs. If the persons supported by the deceased are minors, their living expenses shall be paid until they reach the age of 18; as to the others who have no working capability, living expenses shall be paid until their death.

Article 28 Infringement of property right of a citizen, a legal person, or other organizations, resulting in damage being caused, shall be dealt with in accordance with the following provisions:

(1) If fines, recovery or confiscation of property have been ordered, or monies and chattels have been expropriated and expenses apportioned in violation of the provisions of the State, the properties shall be returned;

(2) If properties have been sealed up, distrained or frozen, the restraints shall be lifted; for properties thus damaged or missing, compensation shall be paid in accordance with the provisions of Items 3 and 4 of this Article;

(3) If the property to be returned is damaged, it shall be restored to its original condition if such restoration can be done; if not, corresponding compensation shall be paid in accordance with the extent of damage;

(4) If the property to be returned is missing, corresponding compensation shall be paid;

(5) If the property has been sold by auction, the proceeds of the auction shall be returned;

(6) If the certificate and licence have been revoked and suspension of production and business has been ordered, compensation shall be paid for necessary overhead expenses for the period of such suspension; and

(7) If other damage is done to property rights, compensation shall be paid for the direct losses.

Article 29 Compensation expenses shall be entered in the financial budget at various levels, specific measures therefore are to be provided by the State Council.

## Chapter V Other Provisions

Article 30 If the presence of any one of the circumstances stipulated in Items 1 and 2 of Article 3 and Items 1, 2 and 3 of Article 15 of this Law has been lawfully confirmed and found injurious to

the victim's reputation and honour, the organ liable for compensation shall, within the scope of influence of the tortious act, eliminate the evil effects for the victim, rehabilitate his reputation, and extend an apology.

Article 31 If a people's court, in violation of the law, adopts in civil or administrative proceedings compulsory measures or preservative measures in impairment of the proceedings, or wrongly executes a judgment or a ruling or other effective legal documents, thereby resulting in damage being done, the criminal compensation procedures of this Law shall be applicable to the procedure for making claims for compensation by the claimant.

Article 32 The limitation of action for claims for State compensation shall be two years, to be counted from the day the exercise of the functions and powers by a State organ and its functionaries is lawfully confirmed to be in violation of law, but the period of detention of the victim shall not be counted.

The limitation of action for claims for State compensation shall be suspended if during its last six months, the claimant is unable to exercise his rights due to force majeure or other obstacles. The limitation shall resume from the day the grounds for suspension are eliminated.

Article 33 If a foreigner, a foreign enterprise, or a foreign organization within the territory of the People's Republic of China demands compensation to be made by the People's Republic, this Law shall apply.

If a State to which a foreigner, a foreign enterprise, or a foreign organization belongs gives no protection to or limits the right of a citizen, a legal person, or other organizations of the People's Republic of China to claim compensation by that State, the People's Republic of China shall implement the principle of reciprocity with the State to which the foreigner, the foreign enterprise, or the foreign organization belongs.

## Chapter VI Supplementary Provisions

Article 34 No organs liable for compensation or undertaking the reconsideration of a case, or the people's courts may collect any expenses from a claimant to State compensation.

No tax shall be levied as regards the compensation a claimant has obtained.

Article 35 This Law shall go into effect as of January 1, 1995.

# **Law of the People's Republic of China on Public Servants**

Adopted at the 15th Meeting of the Standing Committee of the Tenth National People's Congress  
on April 27, 2005

## Contents

Chapter I General Provisions

Chapter II Qualifications, Duties and Rights of Public Servants

Chapter III Posts and Ranks

Chapter IV Recruitment and Employment

Chapter V Assessment

Chapter VI Post Appointment and Removal

Chapter VII Post Promotion and Demotion

Chapter VIII Rewards

Chapter IX Penalties

Chapter X Training

Chapter XI Exchange and Avoidance

Chapter XII Salary, Welfare and Insurance

Chapter XIII Resignation and Dismissal

Chapter XIV Retirement

Chapter XV Appeal and Accusation

Chapter XVI Position Appointment

Chapter XVII Legal Responsibility

Chapter XVIII Supplementary Provisions

Chapter I General Provisions

Article 1 This Law is enacted in accordance with the Constitution and for the purpose of regularizing the administration of public servants, safeguarding their lawful rights and interests, improving supervision over them, building up a contingent of public servants with high quality, promoting a diligent and clean government and enhancing its efficiency.

Article 2 For the purposes of this Law, public servants are workers who perform official duties according to law, are members of the administrative establishment of the State, and whose salaries and welfare benefits are paid by the government.

Article 3 This Law is applicable to the duties and rights as well as the administration of public servants. Where there are other provisions contained in the laws governing the election, appointment and removal of, and the supervision over, the leading persons among public servants, and the duties and rights and the administration of judges, procurators, etc., those provisions shall be applicable.

Article 4 In application of the public servant system, Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory and the important thought of “Three Represents” shall be upheld as the guidance, the basic line for the primary stage of socialism shall be implemented, the cadre line and policy of the Communist Party of China shall be carried out, and the principle that cadres are under the administration of the Party shall be adhered to.

Article 5 Public servants shall be administered in adherence to the principles of openness, equality, competition and selection on the basis of merits, and in compliance with the statutory limits of authority, requirements, standards and procedures.

Article 6 Public servants shall be administered in adherence to the principle of laying equal stress on supervision and restriction on the one hand and on encouragement and safeguard on the other.

Article 7 Public servants shall be appointed in adherence to the principles of appointing people on their merits and people with both political integrity and professional competence, with stress placed on practical achievements in work.

Article 8 The State administers public servants by grouping them in different categories in order to improve administrative efficiency and raise the level of scientific management.

Article 9 When performing their official duties according to law, public servants shall be protected by law.

Article 10 The department in charge of public servants at the central level shall be responsible for the comprehensive administration of public servants nationwide. The local departments in charge of public servants at or above the county level shall be responsible for the comprehensive administration of public servants within the areas under their respective jurisdictions. The department in charge of public servants at a higher level shall direct the administration of public servants conducted by such department at a lower level. The departments in charge of public servants at various levels shall direct the administration of public servants conducted by the various organs at the same level.

## Chapter II Qualifications, Duties and Rights of Public Servants

Article 11 A public servant shall meet the following qualifications:

- (1) holding the nationality of the People's Republic of China;
- (2) having reached the age of 18;
- (3) upholding the Constitution of the People's Republic of China;
- (4) being a person of good morality;
- (5) being physically qualified for normal performance of duties;
- (6) having the education and ability commensurate with the requirements of the post; and
- (7) having other qualifications specified by law.

Article 12 Public servants shall perform the following duties:

- (1) exemplarily observing with the Constitution and laws;
- (2) conscientious by performing their duties in compliance with the specified limits of authority and procedures and endeavoring to increase their work efficiency;
- (3) wholeheartedly serving the people and accepting supervision by the people;
- (4) safeguarding the security, honor and interests of the State;
- (5) being faithful in the discharge of their duties, diligently fulfilling their responsibilities, and abiding by and implementing the decisions made and the instructions given by higher authorities in accordance with law;
- (6) guarding State secrets and job secrets ;
- (7) abiding by discipline, faithfully adhering to professional ethics and exemplarily observing public morality;
- (8) being clean and upright, and impartial and honest in their ways; and
- (9) performing other duties provided for by law.

Article 13 Public servants shall have the following rights:

- (1) being provided with the working conditions necessary for the performance of their duties;
- (2) being free from being removed from office, demoted and discharged, and free from disciplinary action, unless on statutory grounds and through statutory procedures;
- (3) getting salaries, remunerations, and enjoying welfare benefits and insurance;

- (4) having access to training;
- (5) putting forward criticisms and proposals regarding the work of their organs and the leading persons;
- (6) lodging appeals and accusations;
- (7) applying for resignation; and
- (8) enjoying other rights provided for by law.

### Chapter III Posts and Ranks

Article 14 The State practices the system of categorized posts among public servants.

The posts held by public servants shall, according to the nature and characteristics of the post and administrative needs, be categorized as comprehensive administration, professional skills and administrative law enforcement. Where separate administration is required for a post due to its specific characteristics, the State Council may, in accordance with this Law, set up an additional category for such post. The scope covered by the different categories of posts shall be prescribed by the State separately.

Article 15 The State establishes an order of posts held by public servants on the basis of the categories of such posts.

Article 16 The posts of public servants are divided into leading and non-leading posts.

The levels of the leading posts include: chief and deputy at the central level, chief and deputy at the provincial and ministerial level, chief and deputy at the department and bureau level, chief and deputy at the county and division level, chief and deputy at the township and section level.

The levels of non-leading posts are set up at or below the department and bureau level.

Article 17 The leading posts under the category of comprehensive administration shall be established in accordance with the Constitution, relevant laws, levels of posts and institutions.

The non-leading posts under the category of comprehensive administration include: inspector, deputy inspector, analyst, associate analyst, senior section member, junior section member, section member and office clerk.

The order of posts for the public servants under the categories other than the category of comprehensive administration shall be prescribed separately by the State in accordance with this Law.

Article 18 The various government departments shall set up specific posts for the public servants thereof in accordance with the established functions, institutional echelons, limits of the authorized

size, number of posts and structural proportion, and define the official duties and responsibilities as well as the qualifications for holding a post.

Article 19 The posts of public servants shall correspond with the relevant ranks. The corresponding relations between the posts and ranks of public servants shall be defined by the State Council.

The posts and ranks of public servants provide the basis for determining their salaries and other benefits.

The rank of a public servant shall be determined on the basis of the post he holds, his political integrity and professional competence, his achievements in work, and his educational qualifications and seniority. A public servant remaining at the same post may be promoted in rank according to State regulation.

Article 20 The State shall establish ranks corresponding with relevant posts in light of the working characteristics of the people's police as well as public servants of the Customs and diplomatic missions abroad.

#### Chapter IV Recruitment and Employment

Article 21 Public servants for non-leading posts at or below the level of senior section member and at other levels of corresponding posts shall be recruited and employed through open examination, strict review, competition on an equal footing and selection on the merits.

When recruiting public servants in accordance with the provisions of the preceding paragraph, the authorities of the national autonomous regions may, in accordance with law and relevant regulations, give appropriate considerations to the ethnic people who register for examination.

Article 22 The department in charge of public servants at the central level shall be responsible for making arrangements for recruitment and employment of public servants for the government departments at the central level and the departments and institutions directly under them. The department in charge of public servants at the provincial level shall be responsible for making arrangements for recruitment and employment of public servants of the various local government departments, and where necessary, the department in charge of public servants at the provincial level may authorize the department in charge of public servants at the level of a city divided into districts to make such arrangements.

Article 23 A person who registers for examination of public servants shall, in addition to the qualifications specified in Article 11 of this Law, meet the qualifications required for the post he intends to hold as specified by the department in charge of public servants at or above the provincial level.

Article 24 The following persons shall not be recruited as public servants:

- (1) persons on whom criminal punishment has been imposed due to committing a crime;
- (2) persons who have been discharged from public employment; and
- (3) other persons who are not to be recruited as public servants, as prescribed by law.

Article 25 Public servants shall be recruited and employed within the limits of the authorized size, and when there are vacancies of corresponding posts to be filled up.

Article 26 Before recruiting and employing public servants, a public notice of entrance examination shall be issued. In a public notice of entrance examination shall be clearly stated the posts, the number of public servants needed, the qualifications for examinees, the application materials required to be submitted and other matters for attention.

Recruiting departments shall take measures to facilitate citizens' registration for examination.

Article 27 Recruiting departments shall examine the applications for registration for examination in accordance with the qualifications required of the examinees. The application materials submitted by examinees shall be true and accurate.

Article 28 The examination for recruitment and employment of public servants shall be conducted in the forms of written examination and interviews. The contents of the examinations shall be specified in accordance with the basic ability required of public servants and the different categories of posts.

Article 29 Recruiting departments shall, on the basis of the examination results, decide on the candidates for review and reexamine their qualifications for registration for examination, conduct review and arrange for their physical check-up.

The items of and standards for physical check-up shall be based on the requirements of the posts. The specific measures in this regard shall be formulated by the government department at the central level in charge of public servants, in conjunction with the health administration department under the State Council.

Article 30 Recruiting departments shall, on the basis of the examination results, and the results of the review and physical check-up, make a name list of the persons to be recruited, and make it known to the public.

At the expiration of the period for such publicity, the recruiting department at the central level shall submit the name list of the persons to be recruited to the department in charge of public servants at the central level for the record; and the various local recruiting departments shall submit the name lists of the persons to be recruited to the departments in charge of public servants at the provincial level or at the level of a city divided into districts for examination and approval.

Article 31 Upon approval by the department in charge of public servants at or above the provincial level, simplified procedures or other methods for test and appraisal may be adopted for recruiting public servants for special posts.



Article 32 The trial period for a newly recruited public servant shall be one year. If he is qualified at the expiration of the trial period, he shall be employed; otherwise, his recruitment shall be cancelled.

## Chapter V Assessment

Article 33 Assessment of public servants shall be conducted in compliance with the limits of authorized administration, and in an all-round way, covering their political integrity, ability, diligence, achievements and incorruptibility, with special attention paid to actual achievements in work.

Article 34 The assessment of public servants shall be divided into routine and regular assessments. Regular assessments shall be made on the basis of routine assessment.

Article 35 Regular assessment of the public servants who are non-leading members shall be made annually. The public servants themselves shall firstly give their summaries in light of the duties and responsibilities of their posts and relevant requirements. After listening to the opinions from the masses, the leading person in charge shall make a proposal concerning the grades of the assessment, and then the leading person of the department or an authorized appraisal committee shall decide on the grades of the assessment.

The regular assessment of the leading persons shall be conducted by the department in charge in accordance with relevant regulations.

Article 36 The results of regular assessment are divided into four grades, namely, excellent, competent, basically competent, and not competent.

Public servants themselves shall be informed of the results of the regular assessment in writing.

Article 37 The results of regular assessment shall serve as the basis for adjustment of the posts, ranks and salaries of public servants as well as for rewards, training and dismissal of public servants.

## Chapter VI Post Appointment and Removal

Article 38 The election system and appointment system shall be applied among public servants in respect of their posts. The tenure system shall, in accordance with the State regulations, be applicable in respect of the posts of leading persons.

Article 39 A public servant to whom the election system is applicable shall take the post he is elected to when the result of election comes into effect; and he shall not renew the term of office at

the expiration of his term of office, or if he resigns, or is removed or dismissed from office during his term of office, the post shall be terminated accordingly.

Article 40 Where a public servant under the appointment system passes the examination conducted at the expiration of his trial period, or there is a change in connection to his post, or he ceases to hold the public service post, or other circumstances necessitate his appointment or removal, he shall accordingly be appointed or removed within the limits of authorized administration and through the statutory procedures.

Article 41 Public service posts shall be appointed within the authorized size and number of the posts, and when there are the necessary vacancies to be filled up.

Article 42 For a public servant to hold a concurrent post outside his own department due to the need of work, the matter shall be subject to approval by the department concerned, and he shall not receive any remuneration for such post.

## Chapter VII Post Promotion and Demotion

Article 43 A public servant to be promoted to a higher office shall meet the requirements and qualifications in terms of ideological and political quality, work capability, educational level and work experience.

Promotion of public servants to higher posts shall be done level by level. For a public servant who is especially excellent or there is a special need for work, he may be promoted by breaking conventions or by skipping one level in accordance with relevant regulations.

Article 44 Where a public servant is promoted to a leading post, the following procedures shall be used:

- (1) on the basis of democratic recommendation, deciding on the candidate for review;
- (2) arranging for review, studying and setting forth proposals for the post to be assigned to, and deliberating on them within a certain scope, where necessary;
- (3) discussing and deciding on the candidate within the limits of authorized administration; and
- (4) completing the formalities for appointment in accordance with relevant regulations. For promoting a public servant to a non-leading post, the procedures specified in the preceding paragraph shall be followed *mutatis mutandis*.

Article 45 When there is a vacancy for a leading post at or below the level of the chief of the department or bureau in the body set up within a department, the candidate for the vacancy may be selected through competition among people working within the department or system.

When there is a vacancy for a leading post at or below the level of the chief of the department or bureau or for a non-leading post at or above the level of associate analyst and other corresponding

levels, a candidate for such a vacancy may be selected openly from among people in the community.

Candidates for beginners of judges and procurators may be decided on through open selection from among people in the community, that is, from among the persons who have passed the unified judicial examinations conducted by the State and are qualified for such posts.

Article 46 When a public servant is to be promoted to a leading post, the publicity system prior to his assumption of the post and the trial system shall be carried out in accordance with relevant regulations.

Article 47 If a public servant is determined to be incompetent through regular assessment, he shall be demoted to a post at the next lower level in compliance with the prescribed procedures.

## Chapter VIII Reward

Article 48 A public servant or a collective of public servants that has fulfilled the official duties outstandingly, or has made remarkable achievements and contributions, or has performed other outstanding meritorious deeds shall be rewarded. The principle of combining moral encouragement with material reward, taking former as the main form, shall be applied.

The reward to a collective of public servants shall be applicable to an organization set up in accordance with the order of establishment or to a working team formed for the fulfillment of a special task.

Article 49 A public servant or a collective of public servants that meets one of the following conditions shall be rewarded:

- (1) being loyal to official duties, enthusiastic in work and having made remarkable achievements;
- (2) observing rules of discipline, performing official duties with honesty, being honest and upright, being fair in handling matters, and playing an outstandingly exemplary role;
- (3) bringing about remarkable economic or social benefits through invention and innovation in work or by putting forward rationalization proposals;
- (4) having made outstanding contributions to the enhancement of unity of the nationalities and to the maintenance of social stability;
- (5) having attained outstanding successes in protecting public property and economizing on the use of resources and property of the country;
- (6) having performed meritorious services in preventing or obviating accidents, thus protecting the interests of the State and the people from losses or reducing such losses;

- (7) having made contributions by disregarding personal safety under special circumstances such as emergency rescue and disaster relief;
- (8) having performed meritorious deeds in fighting against violations of laws and rules of disciplines;
- (9) having won honor and interests for the country in foreign exchanges; or
- (10) having had other outstanding achievements.

Article 50 Rewards include: a Citation; a Citation for Merit, Third Class; a Citation for Merit, Second Class; a Citation for Merit, First Class; and conferring of an honorary title.

A public servant or a collective of public servants rewarded shall be commended and be given monetary awards in one lump sum or other material benefits.

Article 51 Rewarding of a public servant or a collective of public servants shall be subjected to decision or approved in compliance with the specified limits of authority and procedures.

Article 52 Under one of the following conditions, the reward given to a public servant or a collective of public servants shall be revoked:

- (1) obtaining the reward through fraud and deception;
- (2) concealing grave mistakes when applying for the reward or seriously going against the prescribed procedures; or
- (3) other conditions under which the reward should be revoked in accordance with the provisions of laws and regulations.

## Chapter IX Penalties

Article 53 Public servants shall observe discipline and are not allowed to commit any of the following acts:

- (1) spreading views impairing the reputation of the country, or organizing or participating in activities aimed at opposing the country, such as assemblies, marches and demonstrations;
- (2) organizing or joining illegal organizations, organizing or participating in strikes;
- (3) neglecting duties and adversely affecting the work;
- (4) refusing to implement the decisions and orders made by the higher authorities according to law;
- (5) suppressing criticism and resorting to retaliation;
- (6) misleading and cheating the leadership and the public by means of fraud and deception;

- (7) committing corruption, offering or accepting bribes, and seeking personal gains or benefits for another person by taking advantage of official position;
- (8) violating financial and economic discipline and wasting the resources and property of the country;
- (9) abusing powers and infringing upon the lawful rights and interests of citizens, legal persons or other organizations;
- (10) disclosing State secrets or job secrets;
- (11) impairing the honor and interests of the country in foreign exchanges;
- (12) participating in or supporting activities such as pornography, drug-taking, gambling and superstition;
- (13) violating professional ethics and social morals;
- (14) engaging or participating in profit-making activities, and concurrently holding a post in an enterprise or other profit-making organizations;
- (15) being absent from work without leave or failing to return to work without justifiable reasons after finishing work-related mission or at the expiration of leave; and
- (16) committing other acts in violation of rules of discipline.

Article 54 If a public servant, when performing official duties, deems that a decision or an order made by higher authorities is erroneous, he may put forward a proposal to the higher authorities for correcting or revoking the decision or order. If the higher authorities refuse to change the decision or order, or demands immediate implementation, he shall implement the decision or order, and the higher authorities shall be accountable for the outcome of the implementation, while the public servant shall bear no responsibility for it. However, if he implements a decision or an order which is obviously against the law, he shall bear due responsibility according to law.

Article 55 If a public servant should bear disciplinary liability due to his violation of law or rules of discipline, a disciplinary action shall be taken against him in accordance with this Law; and if the circumstances in which the rules of discipline are violated are minor and he has mended his ways after criticism and education, he may be exempted from such action.

Article 56 Disciplinary actions include: warning, recording of a demerit, recording of a serious demerit, demotion, removal from office and discharge from public employment.

Article 57 A disciplinary action taken against a public servant shall be based on clear facts, verified evidence, accurate determination of the nature of the case, proper handling, lawful procedures and complete formalities.

If a public servant violates discipline, the department imposing disciplinary actions shall make the decision to initiate an investigation into the circumstances of the violation, and inform the public servant himself of the facts ascertained through investigation and the basis on which a disciplinary

action is to be taken against him. The public servant shall have the right to make a statement and explain himself.

If a department imposing disciplinary actions deems that a disciplinary action should be taken against a public servant, it shall make a decision to such an effect within the prescribed time limit and in compliance with the limits of authorized administration and the prescribed procedures. The public servant himself shall be informed of such decision in writing.

Article 58 During the period of being subjected to disciplinary action, a public servant shall not be promoted to a higher post or rank; and if, he is subjected to the recording of a demerit or a serious demerit, or is demoted to a lower rank, or removed from office, he shall not be promoted to a higher grade of the salary scale.

The periods of disciplinary actions are: 6 months for the warning; 12 months for the recording of a demerit; 18 months for the recording of a serious demerit; and 24 months for the demotion to a lower rank or removal from office.

A public servant who is removed from office shall be demoted in rank in accordance with relevant regulations.

Article 59 If a public servant who is subjected to a disciplinary action other than the discharge from public employment has shown repentance during the period of disciplinary action, and has ceased violation of discipline, the department deciding on such action shall, at the expiration of the period of the disciplinary action, lift the action and inform the public servant himself of the lift in writing.

After a disciplinary action is lifted, promotion to a higher grade of the salary scale, a higher rank or post shall no longer be affected by the former disciplinary action. However, the lift of a disciplinary action for demotion to a lower rank or removal from office shall not thus be deemed as the reinstatement in the former rank or post.

## Chapter X Training

Article 60 A department shall conduct training among public servants on the basis of classified grades and categories and in light of the requirements of official duties of public servants and the need for enhancing the quality of public servants.

The State sets up institutions specializing in training for public servants. A department may, in light of need, entrust other training institutions with the training of public servants as well.

Article 61 A department shall conduct training for the newly recruited persons who have just taken their posts during the trial period; training for the public servants who have been promoted to leading posts shall be arranged before they take the posts or within one year after they have taken the leading posts; special professional training shall be arranged for the public servants engaged in special work; and in-service training for all public servants shall be arranged in order to update their knowledge and increase their work capability. And among the public servants who

hold professional and technical posts, professional and technical training for them shall be arranged in accordance with the requirements for continued education among professional and technical persons.

The State shall, in a planned manner, improve training among reserve leading persons.

Article 62 Training of public servants shall be administered through registration.

The period of time for training among public servants shall be determined by the department in charge of public servants in accordance with the requirements for training specified in Article 61 of this Law.

Training received by a public servant and his academic record shall serve as one of the bases for his assessment, appointment and promotion.

## Chapter XI Exchange and Avoidance

Article 63 The State applies an exchange system among public servants.

Public servants may be exchanged within the contingent of public servants, and may also be exchanged with persons engaged in official duties from State-owned enterprises and public institutions, people's organizations and non-government organizations.

The forms of exchange include assignment to another post, transfer and secondment for getting experience.

Article 64 Persons engaged in official duties from State-owned enterprises and public institutions, people's organizations and non-government organizations may be transferred to government departments to take leading posts or non-leading posts at or above the position of associate analyst and other positions at corresponding as well. The candidate to be transferred shall meet the qualifications specified in Article 11 of this Law and the qualifications required by the post to be taken, and he shall not be a person as specified in Article 24 of this Law. The department planning to accept the transfer of a person shall, in accordance with the provisions mentioned above, conduct strict review on the candidate to be accepted, and grant approval in compliance with the limits of authorized administration, and may give the candidate tests, when necessary.

Article 65 Public servants transferred between different posts shall possess the qualifications required by the posts to be taken, and such transfer shall be made within the limits of the authorized size and the number of posts.

Leading persons at or below the chief at the provincial or ministerial level shall be transferred between regions and departments in a planned way and with special attention paid to certain leading persons.

The public servants who hold leading posts of the bodies set up within a department or who hold non-leading posts of a special nature shall be transferred within the department in a planned way.

Article 66 Public servants may, in light of the need for training them to become experienced, be selected and sent to departments at the lower or higher levels, to departments in other regions and to State-owned enterprises and public institutions as the secondment for the purpose.

During the period of the secondment for training to become experienced, the organizational affiliation of the public servants with their original departments shall remain unchanged.

Article 67 Public servants shall obey the decisions made by the departments for exchange.

If a public servant himself applies for an exchange, the application shall be subject to approval within the limits of authorized administration.

Article 68 If public servants are connected by conjugal relationship, lineal blood relationship, collateral relative relationship by blood within three generations, or by close in-law relationship, they shall not take posts directly under the same leader within the same department or take the posts that are connected by a relationship directly between the lead and the led, and nor shall they work in the fields of organization, personnel affairs, discipline inspection, supervision, auditing or financial work in a department where one of the parties holds a leading post.

With regard to special regions or work of special nature, where adaptation need to be made in order to implement the avoidance system when making appointments, the regulations in this respect shall be formulated by the department in charge of public servants at or above the provincial level.

Article 69 Among public servants who hold the principal leading posts in departments at the township or county level, or in relevant departments, regional avoidance shall be implemented, except where otherwise provided for by law.

Article 70 When performing official duties, a public servant shall avoid the following circumstances:

- (1) His personal interests are involved;
- (2) The interests of the party with whom he is connected by the ties of kinship, as specified in the first paragraph of Article 68 of this Law, are involved; and
- (3) Other circumstances which may interfere with the performance of his official duties impartially.

Article 71 Where any circumstances arise which require a public servant's avoidance, he himself shall apply for avoidance; and the interested party shall have the right to apply for the public servant's avoidance. Other persons may provide information to the department concerned about the circumstances which require a public servant's avoidance.

The department shall examine the application made by the public servant himself or by the interested party, and make a decision on whether or not there is a need for avoidance, and it may also directly make the decision on avoidance in the absence of application.



Article 72 If there are other provisions stipulated by law on avoidance by public servants, such provisions shall apply.

## Chapter XII Salary, Welfare and Insurance

Article 73 The uniform salary system of the State which combines posts with ranks shall be implemented among public servants.

The principle of distribution according to work shall be applied to the salary system of public servants, which embodies such factors as the duties and responsibilities, work capability, actual achievements in work as well as educational background and seniority, and maintains a rational difference in salaries between different posts and ranks.

The State shall set up a mechanism for normal increase in the salaries of public servants.

Article 74 The salary of a public servant includes the basic salary, allowances, subsidies and bonuses.

A public servant shall, in accordance with State regulations, enjoy such allowances as the extra regional allowances, allowances for poverty-stricken and outlying regions and post allowances.

A public servant shall, in accordance with State regulations, enjoy such subsidies and benefits as housing allowances and medical benefits.

Where a public servant is regarded as excellent or competent through regular assessment, he shall enjoy the year-end bonus in accordance with State regulations. The salaries of public servants shall be paid on time and in full.

Article 75 The salary standards of public servants shall be coordinated with the development of the national economy and be suited to progress of the society.

The State shall institute a salary survey system, under which regular surveys shall be conducted and comparisons be made between the salary standards of public servants and those of people at the corresponding levels who work in enterprises, and take the findings of the surveys and the results of comparisons as the basis for adjustment of the salary standards of public servants.

Article 76 Public servants shall enjoy welfare benefits in accordance with State regulations. The State shall raise the welfare standards of the public servants in line with the level of economic and social development.

Public servants shall follow the working hour system prescribed by the State and take holidays according to State regulations. Where a public servant work overtime in addition to statutory working days, he shall have deferred days off accordingly.

Article 77 The State establishes an insurance system for public servants to guarantee them access to assistance and compensation when they are retired, fall ill, are injured at work, give birth to babies,

are unemployed, etc. When a public servant becomes disabled at work, he shall be entitled to benefits for the injured and disabled as prescribed by the State.

Where a public servant sacrifices himself for public interests, or dies while performing an official duty or dies from an illness because of work, his family members shall receive consolation money and preferential treatment prescribed by the State.

Article 78 No departments shall, on their own, alter the policies on the salaries, welfare benefits and insurance of public servants in violation of State regulations, or increase or reduce their salaries, welfare benefits or insurance without authorization. No departments shall hold up or deduct the salaries to public servants, or be in arrears with payment of the same.

Article 79 The expenditures required for payment of salaries, welfare benefits, insurance premiums and retirement pensions of public servants as well as for the recruitment and employment, training, reward and dismissal of public servants shall be guaranteed by having them listed in the financial budget.

### Chapter XIII Resignation and Dismissal

Article 80 If a public servant wishes to resign from public employment, he shall submit a written application to the department in charge of appointment and removal. The said department shall, within 30 days from the date it receives the application, examine the application before giving approval, and in the case of the application submitted by a leading person who wishes to resign from public office, it shall do so within 90 days from the date it receives the application.

Article 81 A public servant shall not resign from public employment, if he:

- (1) has not served for the minimum number of years prescribed by the State;
- (2) is holding a special post involving State secrets or has not left the post for the number of years prescribed by the State for being relieved of such secrets;
- (3) has not finished the handling of important official business, which requires continued handling by him in person;
- (4) is subject to auditing or disciplinary investigation, or is a criminal suspect and the judicial proceedings have not been concluded; or
- (5) is not allowed to resign from public employment for other reasons, as prescribed by laws and administrative regulations.

Article 82 If a public servant holding a leading post is required by the provisions of law to resign from his post for a change of work, he shall go through the formalities for resignation.

A public servant holding a leading post, owing to his personal or other reasons, may apply for resignation from the leading post of his own accord.

Where a leading person commits a grave mistake or grossly neglects his duty in work, thus causing heavy losses to or exerting a bad influence on society, or, as a leading person, is held responsible for a major accident, he shall admit his mistake and resign from the leading post.

If a leading person who should admit his mistake and resign or is no longer suitable for holding the current leading post due to other reasons does not offer resignation, he shall be ordered to resign from the leading post.

Article 83 A public servant shall be dismissed, if he:

- (1) is regarded as incompetent in the annual assessment for two years running;
- (2) is inadequate for the present post and refuses to accept other arrangement;
- (3) refuses to accept reasonable arrangement for adjustment of his post, which is needed when the department he is working in is reorganized, dissolved, merged with another department, or streamlined;
- (4) fails to perform the duties of a public servant, fails to observe the discipline for public servants, fails to make any change for the better after persuasion, and therefore, is not suitable to remain in the department, but it is inappropriate to dismiss him as a disciplinary action, either; or
- (5) stays away from work without leave, or fails to return after the expiration of his official trip or leave for 15 days running without justifiable reasons, or for 30 days accumulated within one year.

Article 84 A public servant shall not be dismissed, if he:

- (1) becomes disabled while performing official duties and is confirmed as having lost or partially lost the ability to work;
- (2) is within the prescribed period of time for medical treatment after falling ill or being injured;
- (3) is in the period of pregnancy, maternity leave or breast-feeding, in the case of a female public servant; or
- (4) is not to be dismissed for other reasons, as prescribed by laws and administrative regulations.

Article 85 The dismissal of a public servant shall be decided within the limits of authorized administration. The public servant to be dismissed shall be informed in writing of the decision on his dismissal.

The public servant being dismissed may draw the dismissal pay or receive unemployment insurance in accordance with relevant State regulations.

Article 86 Whether resigning from his post or being dismissed, a public servant shall, before leaving the post, go through the procedures for handing over official duties, and when necessary, he may be subject to an auditing in accordance with relevant regulations.

## Chapter XIV Retirement

Article 87 A public servant who reaches the age for retirement prescribed by the State or completely loses his ability to work, shall retire.

Article 88 If a public servant meets one of the following conditions and applies for retirement of his own free will, he may, upon approval by the department in charge of appointment and removal, retire before reaching the retirement age:

- (1) He has worked completely for 30 years;
- (2) He is less than five years away from the retirement age prescribed by the State and yet he has worked completely for 20 years; or
- (3) He meets the other conditions for retirement before reaching the retirement age, as prescribed by the State.

Article 89 After retirement, a public servant shall enjoy retirement pension and other benefits prescribed by the State, and the State shall provide the necessary service and assistance for their everyday life and health, encourage them to participate in social development by bringing their specialties into play.

## Chapter XV Appeal and Accusation

Article 90 If a public servant is not satisfied with the following results of the handling of personnel affairs related to himself, he may, within 30 days from the date he comes to know the said handling, apply for a review to the original department handling the matter; if he is not satisfied with the result of the review, he may, within 15 days from the date he receives the decision made after the review, appeal to the department in charge of public servants at the same level or to a department at the next higher level of the original department handling the matter; and he may, skipping the review, directly lodge an appeal within 30 days from the date he comes to know the said handling:

- (1) disciplinary action;
- (2) dismissal or cancellation of employment;
- (3) demotion in post;
- (4) being regarded as incompetent through the regular assessment;
- (5) removal from office;

(6) being refused the approval for his application for resignation or retirement before reaching the retirement age;

(7) his salary is not fixed or held up or deducted or his welfare and insurance benefits are not held up or deducted in accordance with relevant regulations; or

(8) other matters for which he may lodge an appeal as prescribed by laws and regulations.

If a public servant is not satisfied with the decision made after handling of his appeal by a department at or below the provincial level, he may make an appeal again to a department at the next higher level of the department that has made the decision.

Where a public servant of an administrative department who lodges an appeal to an administrative supervisory department because he is not satisfied with a disciplinary action, the appeal shall be handled in accordance with the relevant provisions of the Law of the People's Republic of China on Administrative Supervision.

Article 91 The original department handling a matter shall, within 30 days from the date it receives the application for review, make a decision after the review. The department accepting and handling appeals lodged by public servants shall, within 60 days from the date it accepts an appeal, make a decision after the handling; and if the case is complicated, the time for making a decision may be properly extended, but such an extension shall not exceed 30 days.

During the period of review or appeal, the execution of the decision on disciplinary action shall not be discontinued.

Article 92 If the department accepting the appeal lodged by a public servant confirms, upon examination, that a personnel affair is handled erroneously, the original department handling the same shall correct it in time.

Article 93 If a public servant believes that the department he is working in and its leading persons have infringed upon his lawful rights and interests, he may, according to law, make an accusation to the department at a higher level or to a special department concerned. The department accepting the accusation shall, without delay, handle it in accordance with relevant regulations.

Article 94 When lodging an appeal or accusation, a public servant shall not make up a story, or lodge a false accusation against or frame up another person.

## Chapter XVI Position Appointment

Article 95 A department may, in light of the need of work and upon approval by the department in charge of public servants at or above the provincial level, implement the appointment system for positions requiring highly professional knowledge and for auxiliary positions.

Where the positions specified in the preceding paragraph involve State secrets, the appointment system shall not be implemented.

Article 96 To engage public servants, a department may openly advertise for the purpose by reference to the procedures for examination and recruitment of public servants, and may also select and appoint the persons from among those who meet the qualifications.

A department shall engage public servants within the specified size of the establishment and the norm for its expenditure on salaries.

Article 97 A department shall, in accordance with the principles of equality, voluntariness and reaching agreement through consultation, conclude written contracts with the public servants it appoints, in which to specify the rights and duties of both the department and the public servants appointed. An appointment contract may be altered or terminated upon agreement reached by both parties through consultation.

The conclusion, alteration or termination of an appointment contract shall be reported to the department in charge of public servants at the same level for the record.

Article 98 An appointment contract shall include clauses concerning the term of the contract, the position and the limits of power and the responsibilities involved, salary, welfare and, insurance benefits and liabilities for breach of contract.

The term of an appointment contract shall be from one year to five years. A trial period may be agreed upon in an appointment contract, and it shall be from one month to six months.

An agreed-upon salary system shall, in accordance with State regulations, be carried out among the public servants employed under the appointment system, and the specific measures in this regard shall be formulated by the department in charge of public servants at the central level.

Article 99 A department shall administer its appointed public servants in accordance with this Law and the appointment contracts.

Article 100 The State shall set up an arbitration system for personnel disputes.

An arbitrator for personnel dispute shall, in accordance with the principles of legitimacy, impartiality and timely handling, safeguard the lawful rights and interests of both parties in a dispute according to law. A personnel dispute arbitration commission shall be established in light of need. A personnel dispute arbitration commission shall be composed of the representatives of the department in charge of public servants, of the employing department, and of the public servants employed under the appointment system, and legal experts.

Where a dispute arises over the fulfillment of the appointment contract between a public servant employed under the appointment system and the department he belongs to, an application for arbitration may be filed to a personnel dispute arbitration commission within 60 days from the date the dispute arises. If the party concerned is not satisfied with the arbitration award, it may bring a lawsuit before a people's court within 15 days from the date it receives the written

arbitration award. Once an arbitration award goes into effect, if one of the parties concerned fails to comply with it, another party may apply to the people's court for enforcement.

## Chapter XVII Legal Responsibility

Article 101 If a department, in violation of the provisions of this Law, commits one of the following acts, the leading department at or above the county level or the department in charge of public servants shall, in compliance with the limits of authorized administration and on the merits of each case, instruct the department in question to correct its mistakes or declare what it has done invalid; the leading persons to be held responsible and persons directly responsible for the violation shall, depending on the seriousness of the case, be subject to criticism and lecturing, or disciplinary action; and if the violation constitutes a crime, criminal responsibility shall be investigated in accordance with law:

- (1) failing to recruit, assign, transfer, appoint or promote public servants in keeping with the authorized size of the department, the number of posts and the qualifications required by the posts;
- (2) failing to give reward to, take disciplinary action against and have avoidance of, public servants and to handle their retirement in accordance with prescribed conditions;
- (3) failing to recruit, assign, transfer, appoint and promote public servants, or to have posts taken through competition, make public selections, or to conduct assessment, give reward and take disciplinary action in compliance with the prescribed procedures;
- (4) altering the standards of salary, welfare and insurance benefits of public servants in violation of State regulations;
- (5) disclosing examination questions, violating examination rules or committing other acts, which seriously impair the openness and impartiality in recruitment, competition for posts and public selection;
- (6) failing to accept or handle, in accordance with relevant regulations, appeals or accusations filed by public servants; and
- (7) other acts committed in violation of the provisions of this Law.

Article 102 Where public servants resign from public employment or retire, they shall not hold office in enterprises with which they have been directly related in work, or in other profit-making organizations, and they shall not engage in profit-making activities directly related to their original work-within three years after leaving their posts in the case of leading persons and within two years in the case of the others.

If a public servant violates the provisions of the preceding paragraph after his resignation from public employment or his retirement, the department in charge of public servants at the same level as the department where he originally worked shall instruct him to make correction within a time

limit; if he fails to do so at the expiration of the time limit, the administrative department for industry and commerce at or above the county level shall confiscate his unlawful gains obtained during his employment, instruct the unit employing him to dismiss him, and shall, depending on the seriousness of the circumstances, impose on the employing units a fine of not less than the amount of the unlawful gains of the person under punishment, but not more than five times that amount.

Article 103 Where a department damages the reputation of a public servant due to its erroneous handling of specific personnel affairs, it shall make an apology to the public servant, rehabilitate his reputation and eliminate the bad effects; and if economic losses are caused therefrom, it shall make compensation according to law.

Article 104 If a staff member of the department in charge of public servants, in violation of the provisions of this Law, abuses his power, neglects his duty or engages in malpractices for personal gain, which constitutes a crime, he shall be investigated for criminal responsibility according to law; and if the violation is not serious enough to constitute a crime, disciplinary action shall be taken against him.

## Chapter XVIII Supplementary Provisions

Article 105 For the purposes of this Law, leading members mean the leading persons of a department, excluding the persons holding leading posts in a body set up within the department.

Article 106 Except for the subsidiary staff doing odd jobs, the staff members of public institutions with the function of administering public affairs, as authorized by laws and regulations, shall, upon approval, be administered according to this Law, *mutatis mutandis*.

Article 107 This Law shall go into effect as of January 1, 2006. The Provisional Regulations of the State Council on Reward and Punishment of Staff Members of the State Administrative Departments, approved by the Standing Committee of the National People's Congress on October 23, 1957 and promulgated by the State Council on October 26, 1957, as well as the Provisional Regulations on Public Servants of the State, promulgated by the State Council on August 14, 1993, shall be abolished at the same time.



## **Law of the People's Republic of China on Lawyers**

Adopted at the 19th Meeting of the Standing Committee of the Eighth National People's Congress on May 15, 1996 and promulgated by Order No. 67 of the President of the People's Republic of China on May 15

### Contents

Chapter I General Provisions

Chapter II Conditions of Practice by Lawyers

Chapter III Law Firms

Chapter IV Business, Rights and Obligations of Practising Lawyers

Chapter V Lawyers Associations

Chapter VI Legal Aid

Chapter VII Legal Liability

Chapter VIII Supplementary Provisions

### Chapter I General Provisions

Article 1 This Law is enacted in order to improve the system governing lawyers, to ensure that lawyers practise according to law, to standardize acts of lawyers, to safeguard the lawful rights and interests of parties, to ensure the correct implementation of law, and to enable lawyers to play a positive role in the development of the socialist legal system.

Article 2 The term "lawyer" as used in this Law means a practitioner who has acquired a lawyer's practice certificate pursuant to law and provides legal services to the public.

Article 3 In his practice, a lawyer must abide by the Constitution and law, and strictly observe lawyers' professional ethics and practice discipline.

In his practice, a lawyer must base himself on facts and take law as the criterion.

Practice by lawyers shall be subject to supervision of the State, society and the parties concerned.

Lawful practice by lawyers shall be protected by law.

Article 4 The judicial administration department under the State Council shall supervise and guide lawyers, law firms and lawyers associations in accordance with this Law.

## Chapter II Conditions of Practice by Lawyers

Article 5 To practise law, a person shall acquire qualification as a lawyer and a practice certificate.

Article 6 The State institutes a system of uniform national examination for the qualification as a lawyer. The qualification as a lawyer shall be granted by the judicial administration department under the State Council to a person who has acquired three years legal education in an institution of higher learning, or more education or attained an equivalent professional level, or has acquired an undergraduate education in another major in an institution of higher learning, or more education, and has passed the examination for the qualification as a lawyer.

Measures for the uniform national examination for the qualification as a lawyer shall be formulated by the judicial administration department under the State Council.

Article 7 A person applying to practise law who has acquired an undergraduate legal education in an institution of higher learning, or more education, who is engaged in professional work such as legal research and teaching, and who has a senior professional title or is of an equivalent professional level, shall be granted the qualification as a lawyer, upon approval by the judicial administration department under the State Council after evaluation and verification in accordance with the prescribed conditions.

Article 8 A person who upholds the Constitution of the People's Republic of China and meets the following conditions may apply to obtain a lawyer's practice certificate:

- (1) possessing the qualification as a lawyer;
- (2) having had practice training at a law firm for a full year; and
- (3) being a person of good character and conduct.

Article 9 A person in any one of the following situations shall not be issued a lawyer's practice certificate:

- (1) having no capacity for civil acts or having limited capacity for civil acts;
- (2) having been subjected to criminal punishment, except for a crime of negligence; or
- (3) having been discharged from public employment or having had his lawyer's practice certificate revoked.

Article 10 A person applying to obtain a lawyer's practice certificate shall submit the following documents:

- (1) an application;
- (2) a lawyer qualification certificate;

- (3) evaluation materials on practice training prepared by the applicant's law firm; and
- (4) a copy of the applicant's certificate of identity.

Article 11 A person applying to obtain a lawyer's practice certificate who, upon examination and verification by the judicial administration department of the people's government at or above the level of the province, autonomous region or municipality directly under the Central Government, is considered to meet the conditions provided for in this Law shall be issued by the department a lawyer's practice certificate within 30 days of receiving the application. If the applicant fails to meet the conditions provided for in this Law, he shall not be issued a lawyer's practice certificate and shall be notified of the matter in writing within 30 days of receiving his application.

Article 12 A lawyer shall practise in one law firm and shall not practise in two or more law firms simultaneously.

A lawyer's practice is not subject to regional restriction.

Article 13 Any of the active working personnel of a State organ shall not concurrently practise as a lawyer.

A lawyer shall not practise law while serving as a member of a standing committee of a people's congress at any level.

Article 14 A person who has not obtained a lawyer's practice certificate shall not practise law under the title of "lawyer" or act as agent ad litem or defend a client for the purpose of seeking economic benefit.

### Chapter III Law Firms

Article 15 A law firm is the organization in which lawyers practise.

A law firm shall meet the following conditions:

- (1) to have its own name, domicile and articles of association;
- (2) to have assets of RMB 100,000 yuan or more; and
- (3) to have lawyers who conform to the provisions of this Law.

Article 16 A law firm established with the capital contribution from the State shall be independent in its practice pursuant to law and shall undertake liability for its debts with its entire assets.

Article 17 Lawyers may establish cooperative law firms, which shall undertake liability for their debts with their entire assets.

Article 18 Lawyers may establish partnership law firms. The partners shall undertake unlimited and joint and several liability for the debts of the law firm.

Article 19 Persons applying to establish a law firm who, after examination and verification by the judicial administration department of the people's government at or above the level of the province, autonomous region or municipality directly under the Central Government, are considered to meet the conditions provided for in this Law shall be issued by the department a law firm practice certificate within 30 days of receiving the application. Those who fail to meet the conditions provided for in this Law shall not be issued a law firm practice certificate and shall be notified of the matter in writing within 30 days of receiving the application.

Article 20 A law firm may establish branch offices. The establishment of a branch office shall be subject to examination and verification conducted in accordance with the prescribed conditions by the judicial administration department of the people's government of the province, autonomous region or municipality directly under the Central Government where the proposed branch office is to be located.

A law firm shall undertake liability for the debts of a branch office it has established.

Article 21 A law firm shall report to the original examination and verification department changes it wishes to make in important matters such as its name, domicile, articles of association, and partners, or dissolution of the firm.

Article 22 A law firm shall, in accordance with the articles of association, arrange for lawyers to carry out business, study laws and State policies, and summarize and exchange work experience.

Article 23 When lawyers undertake business, their law firm shall centrally accept authorization, sign written authorization contracts with the clients and, in accordance with State regulations, collect fees from the parties and truthfully enter them in its accounts.

Law firms and lawyers shall pay tax in accordance with law.

Article 24 Law firms and lawyers shall not solicit business by unfair means such as slandering other lawyers or paying middleman's fees.

#### Chapter IV Business, Rights and Obligations of Practising Lawyers

Article 25 A lawyer may engage in the following business:

- (1) to accept engagement by citizens, legal persons or other organizations to act as legal counsel;
- (2) to accept authorization by a party in a civil or administrative case to act as agent ad litem and participate in the proceedings;
- (3) to accept engagement by a criminal suspect in a criminal case to provide him with legal advice and represent him in filing a petition or charge or obtaining a guarantor pending trial; to accept authorization by a criminal suspect or defendant or accept appointment by a People's Court to act for the defense; and to accept authorization by a private prosecutor in a case of private prosecution

or by the victim or his close relatives in a case of public prosecution to act as agent ad litem and participate in the proceedings;

(4) to represent clients in filing petition in all types of litigation;

(5) to accept authorization by a party to participate in mediation and arbitration activities;

(6) to accept authorization by a party involved in non-litigation legal matters to provide legal services; and

(7) to answer inquiries regarding law and to represent clients in writing litigation documents and other documents regarding legal matters.

Article 26 A lawyer acting as legal counsel shall provide opinions regarding legal issues to the person who has engaged him, draft and review legal documents, act as agent to participate in litigation, mediation or arbitration activities, handle other legal matters authorized by the person who has engaged him, and protect the lawful rights and interests of the person who has engaged him.

Article 27 A lawyer acting as agent in litigation or non-litigation legal matters shall, within the limits of authorization, protect the lawful rights and interests of the client.

Article 28 A lawyer representing a defendant in a criminal case shall present, on the basis of facts and law, materials and arguments to prove that a criminal suspect is innocent or is less guilty than charged, or that his criminal responsibility should be reduced or relieved, in order to protect the lawful rights and interests of the criminal suspect or defendant.

Article 29 A client may refuse to be further defended or represented by a lawyer, and may authorize another lawyer to act in his defense or to represent him.

After accepting authorization, a lawyer shall not, without good reason, refuse to defend or to represent a client. However, if the matter authorized violates law, the client uses the service provided by the lawyer to engage in illegal activities or the client conceals facts, the lawyer shall have the right to refuse to defend or to represent the client.

Article 30 A lawyer participating in litigation activities may, according to the provisions of procedure laws, collect and consult the materials pertaining to the case he is undertaking, meet and correspond with a person whose personal freedom is restricted, appear in court, participate in litigation, and enjoy other rights provided for in the procedure laws.

When a lawyer acts as agent ad litem or defend clients, his right to argue or present a defense shall be protected in accordance with law.

Article 31 When undertaking legal matters, a lawyer may, with the consent of the relevant units or individuals, address inquiries to such units or individuals.

Article 32 In practice activities, a lawyer's right of the person shall not be violated.

Article 33 A lawyer shall keep confidential secrets of the State and commercial secrets of the parties concerned that he comes to know during his practice activities and shall not divulge the private affairs of the parties concerned.

Article 34 A lawyer shall not represent both parties involved in the same case.

Article 35 A lawyer shall not commit any of the following acts in his practice activities:

- (1) to accept authorization privately, charge fees to the client privately, or accept money or things of value from the client;
- (2) to seek the disputed rights and interests of a party or accept money or things of value from the opposing party by taking advantage of providing legal services;
- (3) to meet with a judge, prosecutor, or arbitrator in violation of regulations;
- (4) to entertain and give gifts to a judge, prosecutor, arbitrator or other relevant working personnel or bribe them, or instigate or induce a party to bribe them;
- (5) to provide false evidence, conceal facts or intimidate or induce another with promise of gain to provide false evidence, conceal facts, or obstruct the opposing party's lawful obtaining of evidence; or
- (6) to disrupt the order of a court or an arbitration tribunal, or interfere with the normal conduct of litigation or arbitration activities.

Article 36 A lawyer who once served as a judge or prosecutor shall not act as agent ad litem or defend clients within two years after leaving his post in the People's Court or the People's Procuratorate.

## Chapter V Lawyers Associations

Article 37 A lawyers association is a public organization with the status of a legal person and shall be the lawyers' self-disciplinary organization.

The All-China Lawyers Association is established at the national level, while local lawyers associations are established by provinces, autonomous regions, and municipalities directly under the Central Government. Local lawyers associations may be established according to need by cities divided into districts.

Article 38 The articles of association of lawyers associations are formulated centrally by the national congress of the members and submitted to the judicial administration department under the State Council for the record.

Article 39 A lawyer must join his local lawyers association. A lawyer who has joined his local lawyers association is at the same time a member of the All-China Lawyers Association.

In accordance with the articles of association of lawyers association, members of lawyers associations shall enjoy the rights granted by, and perform the obligations specified in, the articles of association.

Article 40 Lawyers associations shall perform the following duties:

- (1) assuring that lawyers practise according to law and protecting lawyers' lawful rights and interests;
- (2) summarizing and exchanging lawyers' work experience;
- (3) organizing professional training for lawyers;
- (4) conducting education in, inspection of, and supervision over, the professional ethics and practice discipline of lawyers;
- (5) making arrangements for exchanges between Chinese and foreign lawyers;
- (6) mediating disputes arising in lawyers' practice activities; and
- (7) other duties prescribed by law.

Lawyers associations shall give awards to or take disciplinary measures against lawyers in accordance with the articles of association.

## Chapter VI Legal Aid

Article 41 A citizen who needs the assistance of lawyers in respect of matters such as livelihood support, work-related injuries, criminal procedure, claims for State compensation or claims for lawful payment of pensions for the disabled or families of the deceased, but cannot afford lawyers fees, may obtain legal aid in accordance with State regulations.

Article 42 A lawyer must undertake the duty of legal aid in accordance with State regulations, and provide the recipient with legal services in fulfilment of his duty and responsibility.

Article 43 Specific measures for legal aid shall be formulated by the judicial administration department under the State Council and submitted to the State Council for approval.

## Chapter VII Legal Liability

Article 44 If a lawyer commits any of the following acts, the judicial administration department of the people's government of a province, autonomous region, municipality directly under the Central Government or a city divided into districts shall issue a disciplinary warning; where the

case is serious, the said department shall impose a penalty of cessation of practice for no less than three months and no more than one year; and any illegal income shall be confiscated:

- (1) simultaneously practising in two or more law firms;
- (2) representing both parties involved in the same case;
- (3) soliciting business by unfair means such as slandering other lawyers or paying middleman's fees;
- (4) refusing to defend or represent a client, without good reason, after accepting authorization;
- (5) failing to appear in court on schedule to participate in litigation or arbitration without good reason;
- (6) divulging commercial secrets or private affairs of a party concerned;
- (7) accepting authorization privately, charging fees to a client privately, accepting money or things of value from a client or using the provision of legal services to seek the disputed rights and interests of a party concerned or accepting money or things of value from the opposing party;
- (8) meeting with a judge, prosecutor or arbitrator in violation of regulations or entertaining and giving gifts to a judge, prosecutor, arbitrator or other relevant working personnel;
- (9) obstructing the opposing party's lawful obtaining of evidence;
- (10) disrupting the order of a court or arbitration tribunal, or interfering with the normal conduct of litigation or arbitration activities; or
- (11) other acts in respect of which penalties should be imposed.

Article 45 If a lawyer commits any of the following acts, the judicial administration department of the people's government of a province, autonomous region, or municipality directly under the Central Government shall revoke his practice certificate; where the case constitutes a crime, criminal responsibility shall be pursued according to law;

- (1) divulging State secrets;
- (2) bribing a judge, prosecutor, arbitrator or other relevant working personnel or instigating or inducing a party to do so; or
- (3) providing false evidence, concealing important facts or intimidating or inducing another with promise of gain to provide false evidence or conceal important facts.

Where a lawyer is subjected to criminal punishment for an intentional crime, his lawyer's practice certificate shall be revoked.

Article 46 A person who impersonates a lawyer and provides legal services shall be ordered by the public security authorities to cease the illegal practice of law, which shall confiscate his illegal



income and may also impose a fine of no more than 5,000 yuan and detention of no more than 15 days.

A person who has not obtained a lawyer's practice certificate but engages in the business of acting as agent ad litem or defending clients for the purpose of seeking economic benefit shall be ordered to cease the illegal practice of law by the judicial administration department of the local people's government at or above the county level, which shall confiscate any illegal income and may also impose a fine of no less than one and no more than five times the amount of the illegal income.

Article 47 A law firm that commits an act in violation of the provisions of this Law shall be ordered to set it right by the judicial administration department of the people's government of a province, autonomous region, or municipality directly under the Central Government, which shall confiscate any illegal income and may also impose a fine of no less than one and no more than five times the amount of the illegal income; where the case is serious, the law firm shall be ordered to cease practice for consolidation or its practice certificate shall be revoked.

Article 48 If a person on whom a penalty has been imposed does not accept the decision on the administrative penalty rendered by the judicial administration department, he may apply for reconsideration to the judicial administration department at the next higher level within 15 days of receiving the decision. If he does not accept the reconsideration decision, he may bring a lawsuit in a People's Court within 15 days of receiving the reconsideration decision. He may also directly bring a lawsuit in a People's Court.

If a person who has been fined neither applies for reconsideration, institutes administrative proceedings, nor performs the penalty decision, the judicial administration department that rendered the penalty decision may apply to a People's Court for enforcement.

If an application is made for a lawyer's practice certificate according to Article 11 of this Law or application is made for approval to establish a law firm in accordance with Article 19 of this Law, and the applicant does not accept the decision not to issue a lawyer's practice certificate or a practice certificate for the law firm, he may apply for reconsideration or bring a lawsuit pursuant to the procedure provided by the first paragraph of this Article.

Article 49 If a lawyer practises illegally or causes losses to a party due to his fault, the law firm in which he practises shall bear the liability for compensation. After paying compensation, the law firm may claim recovery from the lawyer that acted intentionally or committed gross negligence.

Lawyers and law firms may not be relieved of or limited in the civil liability that they shall bear for the losses caused to a party due to illegal practice of law or fault.

## Chapter VIII Supplementary Provisions

Article 50 With respect to lawyers who serve in the military and provide legal services to the military, their obtaining of the qualification as a lawyer, their rights, obligations and code of

conduct as a lawyer shall be governed by this Law. Specific measures for administration of military lawyers shall be formulated separately by the State Council and the Central Military Commission.

Article 51 Specific measures governing the establishment of offices by foreign law firms to engage in prescribed legal service activities within the territory of the People's Republic of China shall be formulated by the State Council.

Article 52 Specific measures on lawyers fees shall be formulated by the judicial administration department under the State Council and submitted to the State Council for approval.

Article 53 This Law shall go into effect as of January 1, 1997. The Interim Regulations of the People's Republic of China on Lawyers adopted at the 15th Meeting of the Standing Committee of the Fifth National People's Congress on August 26, 1980 shall be repealed at the same time.

## **Law on Licensed Doctors of the People's Republic of China**

Adopted at the 3rd Meeting of the Standing Committee of the Ninth National People's Congress on June 26, 1998 and promulgated by Order No. 5 of the President of the People's Republic of China on June 26, 1998

### Contents

Chapter I General Provisions

Chapter II Examination and Registration

Chapter III Regulations Regarding the Practice of Medicine

Chapter IV Assessment and Training

Chapter V Legal Responsibility

Chapter VI Supplementary Provisions

### Chapter I General Provisions

Article 1 This Law is enacted for the purpose of raising the level of the doctors in general, improving their professional ethics and caliber, safeguarding their lawful rights and interests and protecting the people's health.

Article 2 This Law shall apply to medical workers who have, in accordance with the law, obtained the licenses of qualified doctors or qualified assistant doctors and registered and are employed in medical treatment, disease-prevention or healthcare institutions.

"The Doctors" referred to in this Law include licensed doctors and licensed assistant doctors .

Article 3 Doctors shall observe good professional ethics and possess proficiency in medical work, display the spirit of humanitarianism and perform the sacred duties of preventing and curing diseases, healing the wounded and rescuing the dying and protecting the people's health.

Everybody in the community shall show respect for doctors. Every doctor shall fulfill his duties according to law and be protected by law.

Article 4 The administrative department for public health under the State Council shall be in charge of the affairs of doctors throughout the country.

The administrative departments for public health of the local people's governments at or above the county level shall be in charge of the affairs of doctors within their own administrative regions.

Article 5 The State shall reward the doctors who have made contributions to medical treatment, disease-prevention or health care .

Article 6 technical titles for doctors in the field of medicine shall be assessed and conferred in accordance with the relevant State regulations and so shall doctors be appointed to positions commensurate with their technical titles.

Article 7 Doctors may form or join doctors' associations.

## Chapter II Examination and Registration

Article 8 The State applies the system of examination to determine the qualifications of doctors. The system consists of examinations to determine the qualifications of licensed doctors and examinations to determine the qualifications of licensed assistant doctors.

Measures for the uniform examinations determine the qualifications of doctors shall be formulated by the administrative department for public health under the State Council. Such examinations shall be arranged by the administrative departments for public health of the people's governments at or above the provincial level.

Article 9 Whoever meets one of the following requirements may take the examinations for the qualifications of a licensed doctor:

- (1) having, at least, graduated from the faculty of medicine of a university and, under the guidance of a licensed doctor, worked on probation for at least one year in a medical treatment, disease-prevention or healthcare institution; or
- (2) after obtaining the license for an assistant doctor, having reached the level of a graduate from the faculty of medicine of a university and worked for at least two years in a medical treatment, disease-prevention or healthcare institution; or having reached the level of a graduate from the specialty of medicine of a polytechnic school and worked for at least five years in a medical treatment, disease-prevention or healthcare institution.

Article 10 Anyone who has reached the level of a graduate from the faculty of medicine of a university or a polytechnic school and, under the guidance of a licensed doctor, worked on probation for at least one year in a medical treatment, disease-prevention or healthcare institution, may take the examinations for the qualifications of an assistant doctor.

Article 11 Anyone who in the way of apprenticeship, has studied traditional Chinese medicine for three years or, through years of practice in this field, proves to have mastered specialized knowledge of this field, has passed the examinations conducted by an organization specialized in traditional Chinese medicine or by a medical treatment, disease-prevention or healthcare institutions that is recognized as such by the administrative department for public health of a local government at or above the county level, and is recommended by such an organization or institution, may take the examinations for the qualifications of a licensed doctor or a licensed

assistant doctor. The contents of and measures for such examinations shall be specified by the administrative department for public health under the State Council separately.

Article 12 Anyone who has passed the examinations for the qualifications of a licensed doctor or a licensed assistant doctor shall be certified as such.

Article 13 The State applies the system of registration for licensed doctors.

A certified doctor may apply for registration to the administrative department for public health of the local people's government at or above the county level.

With the exception of the cases as provided for in Article 15 of this Law, the administrative department for public health that is in charge of dealing with such application shall, within 30 days from the date of receiving the application, allow the applicant to register and grant the applicant a doctor's license which is exclusively printed by the administrative department for public health under the State Council.

The medical treatment, disease-prevention and healthcare institutions may go through the registration procedure for all the doctors working for them.

Article 14 Doctors, upon registration, may work for medical treatment, disease-prevention or healthcare institutions at the places, for the types of job and within the scopes of business as registered and engage in medical treatment, disease-prevention or healthcare in such institutions.

No one may work as a doctor without a doctor's license obtained through registration.

Article 15 No one who is found in one of the following cases shall be registered:

- (1) having limited capacity for civil conduct;
- (2) having applied for registration before the expiration of two years beginning from the date when his punishment has been executed to the date when application for registration is made;
- (3) having been imposed on administrative penalty with his doctor's license revoked and less than two years beginning from the date when the penalty decide on to the date when application for registration is made; or
- (4) Any other cases which, according to the regulations of the administrative department for public health under the State Council, considered unsuited for conducting medical treatment, disease-prevention or healthcare.

Where the administrative department for public health that deals with application for registration finds that an application does not meet the requirements and thus refuses to allow the applicant to register, it shall, within 30 days from the date of receiving the application, the applicant of the matter in writing and state the reasons why. If the applicant has any objections, he may, within 15 days from the date receiving the notification, apply for a review or bring a suit to a People's Court according to law.

Article 16 Where a registered doctor is found in any of the following cases, the medical treatment, disease-prevention or healthcare institutions where he is working shall, within 30 days, report the matter to the administrative department for public health that allowed him to register, and the said department shall revoke the registration and withdraw the doctor's license:

- (1) being dead or being announced missing;
- (2) being imposed on a criminal penalty;
- (3) being imposed on administrative penalty which calls for the revocation of the doctor's license;
- (4) having failed in the reexaminations taken at the expiration of suspension of the practice of medicine which is imposed according to the provisions in Article 31 of this Law;
- (5) having stopped working as a doctor for at least two years; or
- (6) Any other case which, according to the regulations of the administrative department for public health under the State Council, is considered unsuited for conducting medical treatment, disease-prevention or healthcare.

Any party who has objections to the revocation of his registration may, within 15 days from the date receiving the notification of the revocation, apply for a review or bring a suit to a People's Court according to law.

Article 17 Where a doctor wishes to change to the registered items such as the place, the type of job and the scope of business, he shall, according to the provisions in Article 13 of this Law, go to the administrative department for public health that allowed him to register to complete the formalities for the change.

Article 18 When a doctor who has stopped doing medical work for at least two years or who is no longer in any of the cases as prescribed in Article 15 of this Law applies to take up the job again, he shall take the examinations conducted by the institutions specified in Article 31 of this Law and, after passing the examinations, reregister according to the provisions in Article 13 of this Law.

Article 19 Any licensed doctor who wishes to apply for self-employment need to have register and have worked for at least five years in a medical treatment, disease-prevention or healthcare institution and to go through the formalities of examination and approval according to relevant State regulations; he may not practise medicine on his own without such approval.

The administrative departments for public health of the local people's governments at or above the county level shall, according to the regulations of the administrative department for public health under the State Council, constantly supervise and inspect the doctors who practise medicine on their own and, when such doctors are found to be in any of the cases as prescribed in Article 16 of this Law, the said department shall immediately revoke their registration and withdraw their license.

Article 20 The administrative departments for public health of the local people's governments at or above the county level shall publicize the name lists of the doctors who are allowed to register and those whose registration is revoked and submit the name lists to the administrative departments

for public health of the people's governments at the provincial level, which shall report to the administrative department for public health under the State Council for the record.

### Chapter III Regulations Regarding the Practice of Medicine

Article 21 Doctors shall enjoy the following rights in their practice of medicine :

- (1) within the registered scope of business, to examine and diagnose diseases, conduct disease investigation, give medical treatment and provide relevant medical document verification, and adopt medical treatment, disease-prevention and healthcare;
- (2) according to the standards set by the administrative department for public health under the State Council, to be provided with the basic medical facilities needed to do their specific medical work;
- (3) to engage in medical research and academic exchange and join specialized academic organizations;
- (4) to receive professional training and follow-up education in medicine;
- (5) to be protected from offences against dignity and safety of the person in the course of their work ;
- (6) to receive their pay and other allowances and enjoy the welfare benefits according to State regulations; and
- (7) to give comments and suggestions about medical treatment, disease-prevention or healthcare in the institutions they work and about the work of the administrative departments for public health and, in accordance with law, participate in the democratic management of the said institution.

Article 22 Doctors shall perform the following obligations in their practice of medicine:

- (1) abiding by laws and regulations and observing rules for technical operation;
- (2) devoting themselves to the profession, following professional ethics, fulfilling their duties as doctors and serving the patients conscientiously;
- (3) caring for, loving and respecting the patients and preserving their privacy;
- (4) endeavoring to gain professional proficiency, update their knowledge and improve their technical standards; and
- (5) disseminating the knowledge of public health and healthcare and educating the patients in ways of keeping fit.

Article 23 When taking medical, preventive or healthcare measures and when signing relevant medical document verification, doctors shall conduct diagnosis and investigation themselves and

fill out the medical files without delay as required by regulations; no doctor may conceal, forge or destroy any medical files or the relevant data.

No doctor may provide any medical document verification beyond the scope of his business or irrelevant to the type of his job.

Article 24 Doctors shall take immediate measures to treat emergency patients; no doctor may refuse to give emergency treatment to such patients.

Article 25 Doctors shall administer such medicines and use such disinfectants and medical apparatus as are approved by the State departments concerned.

With the exception of legitimate diagnosis and treatment, any use of anaesthetics, medical toxicant or psychiatric or radioactive medicines is prohibited.

Article 26 Doctors shall tell the patients or their relatives the truth about the patients' condition while avoiding any bad effect on the patients.

Doctor who wishes to conduct any experimental clinical treatment shall obtain approval of the hospital authorities and consent of the patient himself or his relatives.

Article 27 No doctor may, by taking advantage of his position, demand or illegally take money or things of value from the patients or seek any other illegitimate benefits.

Article 28 In case of natural calamities, epidemics, sudden accidents resulting in heavy casualties or other emergencies that seriously endanger people's lives or health, doctors shall accept the assignments of the administrative departments for public health of the people's governments at or above the county level.

Article 29 Where a doctor causes a medical accident or discovers an epidemic, he shall, without delay, report to the institution where he works or to an administrative department for public health, as required by relevant regulations.

Where a doctor discovers that a patient is involved in an incident of injury or dies unnaturally, he shall report to the department concerned, as required by relevant regulations.

Article 30 Licensed assistant doctors shall, under the direction of licensed doctors, do the types of job, as registered in a medical treatment, disease-prevention or healthcare institutions.

Licensed assistant doctors who work in the medical treatment, disease-prevention or healthcare institutions of townships, nationality townships or towns may, in light of the specific medical conditions and needs, independently conduct ordinary practice of medicine.

#### Chapter IV Assessment and Training

Article 31 Institutions or organizations that are entrusted by administrative departments for public health of the people's government at or above the county level shall, in conformity with standards for the practice of doctors, assess the professional levels, achievements and professional ethics of the doctors at regular intervals.



The said institution or organization shall submit the results of the assessment to the administrative departments for public health that are in charge of registration for the record.

Any doctor who is considered unqualified, shall be ordered by the administrative department for public health of the people's government at or above the county level to suspend the practice of medicine for three months to six months and receive training and follow-up medical education. At the expiration of the suspension, he shall be reassessed, and if he is considered qualified, he shall be permitted to resume the practice; otherwise, his registration shall be revoked and the doctor's license withdrawn by the said department.

Article 32 The administrative department for public health of the people's government at or above the county level shall be responsible for guiding, inspecting and supervising the assessment of doctors.

Article 33 Doctors who have one of the following achievements to their credit shall be commended or rewarded by the administrative department for public health of the people's government at or above the county level:

- (1) observing good professional ethics and having performed outstanding deeds in the practice of medicine;
- (2) having made major breakthroughs in and outstanding contributions to medical techniques;
- (3) being distinguished in healing the wounded, rescuing the dying, and giving emergency treatment to patients during natural calamities, epidemics, sudden accidents resulting in heavy casualties or other emergencies which seriously endanger people's lives or health;
- (4) having worked hard for a long time in grass-roots units in outlying or poverty-stricken areas or minority nationality regions where conditions are tough; or
- (5) other achievements for which, according to the regulations of the administrative department for public health under the State Council, they should be commended or rewarded.

Article 34 The administrative departments for public health of the people's governments at or above the county level shall formulate training programs for doctors to train them in various forms and to provide them with the conditions for follow-up education in medicine.

The administrative departments for public health of the people's governments at or above the county level shall take vigorous measures to train the medical workers who are engaged in medical treatment, disease prevention or healthcare in rural areas or minority nationality regions.

Article 35 Medical treatment, disease-prevention or healthcare institutions shall, in accordance with regulations and plans, ensure the doctors of their own institutions to receive training and follow-up education in medicine.

Medical or public health institutions which are entrusted by the administrative departments for public health of the people's governments at or above the county level to assess doctors shall provide or create the conditions for doctors to receive training or follow-up education in medicine.

## Chapter V Legal Responsibility

Article 36 Where a person obtains the doctor's license by illegitimate means, the administrative department for health that granted the license shall revoke it; and the persons who are directly in charge and the other persons who are directly responsible shall be given administrative sanctions according to law.

Article 37 Any doctor who, in violation of the provisions in this Law, commits one of the following acts in the practice of medicine, shall be given a disciplinary warning or ordered to suspend the practice for not less than six months but not more than one year by the administrative department for public health of the people's government at or above the county level; if the circumstances are serious, his license for medical practice shall be revoked; if such act constitutes a crime, he shall be investigated for criminal responsibility:

- (1) causing serious consequences by violating the administrative rules and regulations for public health or the rules for technical operation;
- (2) causing serious consequences by neglecting his duties and delaying the rescue, diagnosis and treatment of an emergency case;
- (3) causing a medical accident by neglecting his duties;
- (4) signing any document verification concerning diagnosis, treatment, epidemiology, birth or death without personally conducting the diagnosis, examination or investigation;
- (5) concealing, forging or destroying without authorization any medical files or the relevant data;
- (6) administering such medicines or using such disinfectants or medical apparatus as have not been approved;
- (7) using anaesthetics, medical toxicants, or psychiatric or radioactive medicines in violation of regulations;
- (8) carrying out experimental clinical treatment without the consent of the patient or his relatives;
- (9) causing serious consequences by divulging the patients' privacy;
- (10) by taking advantage of his position, demanding or illegally taking money or things of value from the patients or seeking other illegitimate benefits.
- (11) failing to accept the assignment of the administrative department for public health under the circumstances of natural calamities, epidemics, sudden accidents resulting in heavy casualties or other emergencies which seriously endanger people's lives or health; or
- (12) failing to report, as required by regulations, when causing a medical accident or discovering an epidemic, a patient who is involved in an incident of injury or an unnatural death.

Article 38 Where a doctor causes an accident in medical treatment, disease prevention or healthcare, the case shall be handled in accordance with law or relevant State regulations.

Article 39 Where persons set up medical institutions for the practice of medicine without permission or non-doctors practise medicine, the administrative department for public health of the people's government at or above the county level shall have such acts banned and their unlawful gains and their medicines and apparatus confiscated, and shall also fine them not more than 100,000 yuan; it shall revoke the doctor's license; if harm is done to patients, they shall bear the liability according to law; and if the act constitutes a crime, the perpetrator shall be investigated for criminal responsibility according to law.

Article 40 Where a person hinders a doctor from conducting practice according to law, humiliates, slanders, intimidates or beats up a doctor, infringes on a doctor's personal freedom or interferes with a doctor's normal work of life, he shall be penalized in accordance with the provisions prescribed in the Regulations on Administrative Penalties for Public Security; if the act constitutes a crime, he shall be investigated for criminal responsibility in accordance with law.

Article 41 Where a medical treatment, disease-prevention or healthcare institution fails to fulfill its duty of reporting the cases according to the provisions prescribed in Article 16 of this Law, thus causing serious consequences, it shall be given a disciplinary warning by the administrative department for public health of the people's government at or above the county level; and the persons who are in charge of the administrative affairs of the institution shall be given administrative sanctions by the said department according to law.

Article 42 Any member of the administrative department for public health or of a medical treatment, disease-prevention or healthcare institution who, in violation of the relevant provisions of this law, practises fraud, neglects his duty, abuses his power or engages in malpractice for personal gain which is not serious enough to constitute a crime, shall be given administrative sanctions according to law; if the act constitutes a crime, he shall be investigated for criminal responsibility.

## Chapter VI Supplementary Provisions

Article 43 Where a person, prior to the date of promulgation of this Law, obtained a technical title in accordance with relevant State regulations, in the profession of medicine and a position in the profession, the matter shall be submitted by the institution where he works to the administrative department for public health of the people's government at or above the county level for confirmation before the person is granted the doctor's certificate. All the medical workers who are engaged in medical treatment, disease-prevention or healthcare in a medical treatment, disease-prevention or healthcare institution shall, in conformity with the requirements prescribed in this Law, together be examined and reported by the institution where they work to the administrative department for public health of the people's government at or above the county level for registration and the issue of doctor's licenses. Specific measures shall be formulated by the

administrative department for public health together with the personnel administrative department under the State Council.

Article 44 This Law shall apply to doctors who work in family-planning service institutions.

Article 45 Any rural doctor who provides villagers with disease-prevention, healthcare or ordinary medical service in a rural medical and health institution and meets the relevant provisions prescribed in this Law may obtain the doctor's certificate or the assistant doctor's certificate in accordance with law. With regard to rural doctors who have not obtained the doctor's certificates or the assistant doctor's certificates as prescribed in this Law, the State Council shall formulate administrative measures separately.

Article 46 Measures for the application of this Law among doctors in the military shall be formulated by the State Council and the Central Military Commission in accordance with the principles of this Law.

Article 47 Persons from abroad who wish to take the examinations for the doctor's certificates, get registered, engage in the practice of medicine or impart clinical instruction or conduct clinical research in the territory of China shall apply in accordance with relevant State regulations.

Article 48 This Law shall go into effect as of May 1st, 1999.

## **Judges Law of the People's Republic of China**

Adopted at the 12th Meeting of the Standing Committee of the Eighth National People's Congress on February 28, 1995, promulgated by Order No. 38 of the President of the People's Republic of China on February 28, 1995, and amended in accordance with the Decision on Amending the Judges Law of People's Republic of China adopted at the 22nd Meeting of the Standing Committee of the Ninth National People's Congress on June 30, 2001

### Contents

Chapter I General Provisions

Chapter II Functions and Duties

Chapter III Obligations and Rights

Chapter IV Qualifications for a Judge

Chapter V Appointment and Removal

Chapter VI Posts to Be Avoided

Chapter VII Grades of Judges

Chapter VIII Appraisal

Chapter IX Training

Chapter X Awards

Chapter XI Punishment

Chapter XII Salary, Insurance and Welfare

Chapter XIII Resignation and Dismissal

Chapter XIV Retirement

Chapter XV Petition and Complaint

Chapter XVI Commission for Examination and Assessment of Judges

Chapter XVII Supplementary Provisions

Chapter I General Provisions

Article 1 This law is enacted in accordance with the Constitution to enhance the quality of judges, to strengthen the administration of judges, and to ensure that the People's Courts independently exercise judicial authority according to law, that judges perform their functions and duties according to law and that law is administered impartially.

Article 2 Judges are judicial persons who exercise the judicial authority of the State according to law, and they include the presidents, vice-presidents, members of judicial committees, chief judges and associate chief judges of divisions, judges and assistant judges of the Supreme People's Court, local People's Courts at various levels and special People's Courts such as military courts.

Article 3 Judges shall faithfully implement the Constitution and laws, and serve the people wholeheartedly.

Article 4 Judges, when performing their functions and duties according to law, shall be protected by law.

## Chapter II Functions and Duties

Article 5 The functions and duties of a judge are as follows :

- (1) to take part in a trial as a member of a collegial panel or to try a case alone according to law; and
- (2) to perform other functions and duties as provided by law.

Article 6 Presidents, vice-presidents, members of judicial committees, and chief judges and associate chief judges of divisions shall, in addition to the judicial functions and duties, perform other functions and duties commensurate with their posts.

## Chapter III Obligations and Rights

Article 7 Judges shall perform the following obligations:

- (1) to strictly observe the Constitution and laws;
- (2) to take facts as the basis and laws as the criterion when trying cases, to handle cases impartially, and not to bend the law for personal gain;
- (3) to protect the litigation rights of the participants in proceedings according to law;
- (4) to safeguard the State interests and public interests, and to safeguard the lawful rights and interests of natural persons, legal persons and other organizations;

(5) to be honest and clean, faithful in the discharge of duties, to observe discipline and professional ethics;

(6) to keep State secrets and the secrets of judicial work; and

(7) to accept legal supervision and supervision by the masses.

Article 8 Judges shall enjoy the following rights:

(1) to have the power and working conditions which are essential to the performance of the functions and duties of judges;

(2) to brook no interference from administrative organs, public organizations or individuals in trying cases according to law;

(3) to be not removed, demoted or dismissed from the post, and to be not given a sanction, without statutory basis and without going through statutory procedures;

(4) to be remunerated for work and to enjoy insurance and welfare benefits;

(5) to enjoy safety of the person, property and residence as ensured by law;

(6) to receive training;

(7) to lodge petitions or complaints; and

(8) to resign their posts.

#### Chapter IV Qualifications for a Judge

Article 9 A judge shall possess the following qualifications:

(1) to be of the nationality of the People's Republic of China;

(2) to have reached the age of 23;

(3) to endorse the Constitution of the People's Republic of China;

(4) to have fine political and professional quality and to be good in conduct;

(5) to be in good health; and

(6) to have worked in law for at least two years in the case of a graduate from a four-year course in the law specialty of an institution of higher education or a graduate from a four-year course in a non-law specialty of such an institution who possesses the professional knowledge of law, and to have worked in law for at least three years in the case of the said graduate to be appointed judge of a Higher People's Court or the Supreme People's Court; to have worked in law for at least one year in the case of a person holding a Master of Law degree or Doctor of Law degree; or a person

holding a master's degree or doctor's degree of non-law specialty who possesses the professional knowledge of law, and to have worked in law for at least two years in the case of the said person to be appointed judge of a Higher People's Court or the Supreme People's Court.

The judicial persons who, before this Law is implemented, do not possess the qualifications as provided by sub-paragraph (6) of the preceding paragraph shall receive training. The specific measures shall be formulated by the Supreme People's Court.

Where it is really difficult to apply the provisions in sub-paragraph (6) of the first paragraph regarding the academic qualifications, such qualifications for judges may, upon examination and approval by the Supreme People's Court and within a limited period of time, be relegated to include graduates from a two-or-three-year course in the law specialty of an institution of higher education.

Article 10 None of the following persons may hold the post of a judge:

- (1) persons who have been subjected to criminal punishment for commission of a crime; or
- (2) persons who have been discharged from public employment.

## Chapter V Appointment and Removal

Article 11 A judge shall be appointed or removed from the post in accordance with the limit of authority for, and procedures of, appointment or removal as prescribed by the Constitution and laws.

The President of the Supreme People's Court shall be elected or removed by the National People's Congress. The vice-presidents, members of the judicial committee, chief judges and associate chief judges of divisions and judges shall be appointed or removed by the Standing Committee of the National People's Congress upon the suggestions of the President of the Supreme People's Court.

The presidents of the local People's Courts at various levels shall be elected or removed by the local People's Congress at various levels. The vice-presidents, members of the judicial committees, chief judges and associate chief judges of divisions and judges shall be appointed or removed by the standing committees of the people's congresses at the corresponding levels upon the suggestions of the presidents of those courts.

The appointment or removal of the presidents of the Intermediate People's Courts set up in prefectures of the provinces or autonomous regions or set up in the municipalities directly under the Central Government shall be decided on by the standing committees of the people's congresses of provinces, autonomous regions or municipalities directly under the Central Government on the basis of the nominations made by the respective councils of chairmen. The vice-presidents, members of the judicial committees, chief judges and associate chief judges of divisions and judges shall be appointed or removed by the standing committees of the people's congresses of the



provinces, autonomous regions or municipalities directly under the Central Government upon the suggestions of the presidents of the Higher People's Courts.

The presidents of the local People's Courts at various levels set up in the national autonomous areas shall be elected or removed by the people's congresses at various levels of the national autonomous areas. The vice-presidents, members of the judicial committees, chief judges and associate chief judges of divisions and judges shall be appointed or removed by the standing committees of the people's congresses at the corresponding levels upon the suggestions of the presidents of those courts.

The assistant judges of the People's Courts shall be appointed or removed by the presidents of the courts where they work.

The measures for the appointment or removal of the presidents, vice-presidents, members of the judicial committees, chief judges and associate chief judges of divisions and judges of the Special People's Courts such as the military courts shall be formulated by the Standing Committee of the National People's Congress separately.

Article 12 Persons to be appointed judges for the first time shall be selected, through strict examination and appraisal, from among those who have passed the uniform national judicial examination and who are the best qualified for the post, in conformity with the standards of having both ability and political integrity.

Persons to be appointed presidents or vice-presidents of People's Courts shall be selected from among the best judges and other people who are best qualified for the post.

Article 13 If a judge is found to be in any of the following circumstances, a suggestion shall be submitted according to law for his or her removal from the post:

- (1) having forfeited the nationality of the People's Republic of China;
- (2) having been transferred out of a court;
- (3) having no need to maintain his or her original post after a change of post;
- (4) being determined to be incompetent in the post through appraisal;
- (5) being unable to perform the functions and duties of a judge for a long period of time due to poor health;
- (6) having retired from the post;
- (7) having resigned the post, or having been dismissed; or
- (8) being disqualified from continuing to hold the post because of violation of discipline or law or commission of a crime.

Article 14 Once the organ discovers that the appointment of a person as judge made by it is in violation of the provisions of this Law governing the qualifications for judges, it shall revoke the appointment. Where a court at a higher level discovers that the appointment of a judge made by a

court at a lower level is in violation of the provisions governing the qualifications for judges, the former shall suggest to the latter that it revoke the appointment in accordance with law or that the it, in accordance with law, suggest to the standing committee of the people's congress at the same level that it revoke the appointment.

Article 15 No judges may concurrently be members of the standing committees of the people's congresses, or hold posts in administrative organs, procuratorial organs, enterprises or institutions, or serve as lawyers.

## Chapter VI Posts to Be Avoided

Article 16 Judges who are connected by husband-wife relationship, or who are directly related by blood, collaterally related within three generations, or closely related by marriage may not, at the same time, hold the following posts:

- (1) the president, vice- presidents, members of the judicial committee, chief judges or associate chief judges of divisions in the same People's Court;
- (2) the president, vice-presidents, judges or assistant judges in the same People's Court;
- (3) the chief judge, associate chief judges, judges or assistant judges in the same division; or
- (4) presidents or vice-presidents of the People's Courts at the levels next to each other.

Article 17 No judge may, within two years after leaving his or her post from a People's Court, serve as an agent ad litem or a defender in the capacity of a lawyer.

No judge may, after leaving his or her post from a People's Court, serve as an agent ad litem or a defender in a case being handled by the court where he or she previously held a post.

No spouse or children of a judge may serve as an agent ad litem or a defender in a case being handled by the court where the judge holds a post.

## Chapter VII Grades of Judges

Article 18 Judges are divided into twelve grades.

The President of the Supreme People's Court is the Chief Justice, and judges from the second to the twelfth grade are composed of associate justices, senior judges and judges.

Article 19 Grades of judges shall be determined on the basis of their posts, their actual working ability and political integrity, their professional competence, their achievements in judicial work and their seniority.

Article 20 Measures for the establishment of the grades and for their evaluation and promotion shall be formulated separately by the State.

## Chapter VIII Appraisal

Article 21 Appraisal of judges shall be conducted by the People's Courts the judges belong to.

Article 22 The appraisal of judges shall be carried out objectively and impartially, through the combined efforts of the leaders and masses, and routinely and annually.

Article 23 The appraisal of judges shall include their achievements in judicial work, their ideological level and moral character, their competence in judicial work and their mastery of law theories, their attitude in and style of work. However, emphasis shall be laid on their achievements in judicial work.

Article 24 The results of the annual appraisal shall fall into three grades: excellent, competent and incompetent.

The results of appraisal shall be taken as the basis for award, punishment, training, removal or dismissal of a judge, and for readjustment of his or her grade and salary.

Article 25 A judge shall be informed of the result of the appraisal in written form. If the judge disagrees with the result, he or she may apply for reconsideration.

## Chapter IX Training

Article 26 Theoretical and professional training for judges shall be carried out in a planned way.

The principles of integrating theory with practice, giving lectures in light of the needs, and emphasizing practical results shall be applied in the training of judges.

Article 27 The judges colleges and universities of the State and other institutions for training judges shall, in accordance with relevant regulations, undertake the task of training judges.

Article 28 The results of the studies of judges and appraisals made during their training shall be taken as one of the bases for their appointment and promotion.

## Chapter X Awards

Article 29 Judges who have made significant achievements and contributions in judicial work, or performed other outstanding deeds shall be rewarded.

The principle of combining moral encouragement with material reward shall be applied in rewarding judges.

Article 30 Judges who have any of the following achievements to their credit shall be rewarded:

- (1) having achieved notable successes in enforcing laws and handling cases impartially;
- (2) having accumulated rich experience in judicial practice that may serve as a guide in judicial work;
- (3) having made proposals for the reform of judicial work that have been adopted and have produced remarkable results;
- (4) having performed outstanding deeds in safeguarding the interests of the State, the collective and the people against heavy losses;
- (5) having performed outstanding deeds by bravely fighting against illegal or criminal acts;
- (6) having made judicial proposals that have been adopted and have produced remarkable results, or having scored outstanding successes in publicizing the importance of the legal system and guiding the work of the people's mediation committees;
- (7) having scored outstanding achievements in protecting State secrets and secrets of judicial work; or
- (8) having performed other meritorious deeds.

Article 31 The awards include: Citation for Meritorious Deeds, Merit Citation Class III, Merit Citation Class II, Merit Citation Class I, and a title of honour.

The awards shall be authorized and procedures gone through in accordance with relevant regulations.

## Chapter XI Punishment

Article 32 No judge may commit any of the following acts:

- (1) to spread statements damaging the prestige of the State; to join illegal organizations; to take part in such activities as assembly, procession and demonstration against the State; and to participate in strikes;
- (2) to embezzle money or accept bribes;
- (3) to bend law for personal gain;

- (4) to extort confessions by torture;
- (5) to conceal or falsify evidence;
- (6) to divulge State secrets or secrets of judicial work;
- (7) to abuse functions and powers; and to infringe upon the lawful rights and interests of natural persons, legal persons or other organizations;
- (8) to neglect his or her duty so as to wrongly judge a case or to cause heavy losses to the party concerned;
- (9) to delay the handling of a case so that work is adversely affected;
- (10) to take advantage of the functions and powers to seek gain for himself or herself or other people;
- (11) to engage in profit-making activities;
- (12) to meet the party concerned or his or her agent without authorization and attend dinners or accept presents given by the party concerned or his or her agent; or
- (13) to commit other acts in violation of law or discipline.

Article 33 A judge who has committed any of the acts listed in Article 32 of this Law shall be given sanctions; if the case constitutes a crime, he or she shall be investigated for criminal responsibility in accordance with law.

Article 34 The sanctions include: a disciplinary warning, a demerit recorded, a grave demerit recorded, demotion, dismissal from the post and discharge from public employment.

The salary of a judge who has been dismissed from the post shall at the same time be reduced and his or her grade be demoted.

Article 35 A sanction shall be authorized and procedures gone through in accordance with relevant regulations.

## Chapter XII Salary, Insurance and Welfare

Article 36 The salary system and scales for judges shall, in light of the characteristics of judicial work, be formulated by the State.

Article 37 The system under which the salaries of judges are increased regularly shall be practiced. The salary of a judge who has been confirmed through appraisal as being excellent or competent may be raised in accordance with regulations; the salary of a judge who has made special contributions may be raised in advance in accordance with regulations.

Article 38 Judges shall enjoy judicial allowances, regional allowances and other allowances and insurance and welfare benefits as prescribed by the State.

### Chapter XIII Resignation and Dismissal

Article 39 If a judge requests resignation, he or she shall present an application in written form before he or she shall be removed in accordance with the procedures as provided by law.

Article 40 A judge shall be dismissed if he or she is found to be in any of the following circumstances:

- (1) to be confirmed by annual appraisal as being incompetent for two successive years;
- (2) to be unqualified for the present post and decline to accept other assignments;
- (3) to refuse to accept reasonable transfer, which is necessitated by restructuring of the judicial organ or reduction of the size of the size of the staff;
- (4) to have stayed away from work without leave or to have overstayed his or her leave without good reason for fifteen days or more in succession, or for thirty days or more in a year aggregated;  
or
- (5) to fail to perform a judge's duty, and make no rectification after criticism.

Article 41 A judge who is dismissed shall be removed from the post in accordance with the procedures as provided by law.

### Chapter XIV Retirement

Article 42 The retirement system regarding judge shall, in light of the characteristics of judicial work, be formulated separately by the State.

Article 43 After retirement judges shall enjoy the insurance of old-age pension and other benefits as prescribed by the State.

### Chapter XV Petition and Complaint

Article 44 If a judge disagrees with the sanction given to him or her or the disposition of his or her case by a People's Court, he or she may, within 30 days from the date of receiving the decision on

the sanction or disposition, apply for reconsideration to the organ which gave the sanction or disposed of the case and shall have the right to appeal to the organ at a level higher than the organ which gave the sanction or disposed of the case.

The organ that receives the appeal must make a decision on it in accordance with regulations.

During the period of reconsideration or petition, execution of the decision on a sanction or disposition made with regard to a judge shall not be suspended.

Article 45 If a State organ or any of its functionaries commits an act infringing upon the rights of a judge as provided by Article 8 of this Law, the judge shall have the right to make a complaint.

If an administrative organ, a public organization or an individual interferes in a case that a judge is trying according to law, that organ, organization or individual shall be investigated for responsibility according to law.

Article 46 The petition or complaint made by a judge shall be true to facts. If a judge makes up a story or lodges a false accusation against an innocent person, he or she shall be investigated for responsibility according to law.

Article 47 Where the sanction given to a judge or the disposition of his or her case is wrong, it shall be put right without delay; if it has damaged the judge's reputation, the reputation shall be rehabilitated, the ill effects shall be eliminated and an apology shall be made; if it has caused financial losses to the judge, compensations shall be made. The persons who are directly responsible for retaliation shall be investigated for responsibility according to law.

## Chapter XVI Commission for Examination and Assessment of Judges

Article 48 A People's Court shall establish a commission for examination and assessment of judges.

The functions and duties of a commission for examination and assessment of judges are to guide the training, examination, appraisal and assessment of judges. Specific measures in this regard shall be formulated separately.

Article 49 The number of persons on a commission for examination and assessment of judges shall be five to nine.

The chairman of a commission for examination and assessment of judges shall be assumed by the president of the court it belongs to.

## Chapter XVII Supplementary Provisions

Article 50 In light of the need of judicial work, the Supreme People's Court may shall, in conjunction with the relevant departments, formulate measures to fix the proportion of judges to other staff members in the People's Courts at different levels.

Article 51 The State institutes a uniform judicial examination system for persons to be appointed judges or procurators for the first time, or to obtain the qualifications for lawyer. The judicial administration department under the State Council shall, in conjunction with the Supreme People's Court and the Supreme People's Procuratorate, formulate implementation measures for judicial examination. The judicial administration department under the State Council shall take charge of the implementation of the measures.

Article 52 The executors of the People's Courts shall be administered with reference to the relevant provisions of this Law.

Measures for the administration of the clerks of the People's Courts shall be formulated by the Supreme People's Court.

The administrative judicial personnel of the People's Courts shall be administered in accordance with the relevant regulations of the State.

Article 53 This law shall go into effect as of July 1, 1995.



## **Public Procurators Law of the People's Republic of China**

Adopted at the 12th Meeting of the Standing Committee of the Eighth National People's Congress on February 28, 1995, promulgated by Order No. 39 of the President of the People's Republic of China, and amended according to the Decision on Amending the Public Procurators Law of People's Republic of China adopted at the 22nd Meeting of the Standing Committee of the Ninth National People's Congress on June 30, 2001

### Contents

Chapter I General Provisions

Chapter II Functions and Duties

Chapter III Obligations and Rights

Chapter IV Qualifications for a Judge

Chapter V Appointment and Removal

Chapter VI Posts to Be Avoided

Chapter VII Grades of Judges

Chapter VIII Appraisal

Chapter IX Training

Chapter X Awards

Chapter XI Punishment

Chapter XII Salary, Insurance and Welfare

Chapter XIII Resignation and Dismissal

Chapter XIV Retirement

Chapter XV Petition and Complaint

Chapter XVI Commission for Examination and Assessment of Judges

Chapter XVII Supplementary Provisions

Chapter I General Provisions

Article 1 This Law is enacted in accordance with the Constitution to enhance the quality of public procurators, to strengthen the administration of public procurators, and to ensure that the People's Procuratorates exercise legal supervision and independently exercise procuratorial authority according to law, that public procurators perform their functions and duties according to law and that law is administered impartially.

Article 2 Public Procurators are the procuratorial personnel who exercise the procuratorial authority of the State according to law, including chief procurators, deputy chief procurators (the Procurator-General, Deputy Procurators-General of the Supreme People's Procuratorate ), members of procuratorial committees, procurators and assistant procurators of the Supreme People's Procuratorate, local People's Procuratorates at various levels and special People's Procuratorates such as military Procuratorates.

Article 3 Public procurators must faithfully implement the Constitution and laws, and serve the people wholeheartedly.

Article 4 Public procurators, when performing their functions and duties according to law, shall be protected by law.

Article 5 The Supreme People's Procuratorate shall exercise leadership over the work of the local People's Procuratorates at various levels and of the special People's Procuratorates. The People's Procuratorates at higher levels shall exercise leadership over the work of the People's Procuratorates at lower levels.

## Chapter II Functions and Duties

Article 6 The functions and duties of Public procurators are as follows :

- ( 1 ) to supervise the enforcement of laws according to law;
- ( 2 ) to make public prosecution on behalf of the State;
- (3) to investigate criminal cases directly accepted by the People's Procuratorates as provided by law; and
- ( 4 ) other functions and duties as provided by law.

Article 7 Chief procurators, deputy chief procurators and members of procuratorial committees shall, in addition to the procuratorial functions and duties, perform other functions and duties commensurate with their posts.

## Chapter III Obligations and Rights

Article 8 Public procurators shall perform the following obligations:

- ( 1 ) to strictly observe the Constitution and laws;
- ( 2 ) to take facts as the basis, and law as the criterion, to enforce laws impartially and not to bend law for personal gain when exercising their functions and duties;
- ( 3 ) to safeguard the State interests and public interests, and to safeguard the lawful rights and interests of natural persons, legal persons and other organizations;
- ( 4 ) to be honest and clean, faithful in the discharge of duties, to observe discipline and professional ethics;
- ( 5 ) to keep State secrets and the secrets of procuratorial work; and
- ( 6 ) to accept legal supervision and supervision by the masses.

Article 9 Public procurators shall enjoy the following rights:

- ( 1 ) to have the power and working conditions which are essential to the performance of functions and duties of public procurators;
- ( 2 ) to brook no interference from administrative organs, public organizations or individuals in performing procuratorial functions and duties according to law;
- ( 3 ) to be not removed, demoted or dismissed from the post, and to be not given a sanction, without statutory basis and without going through statutory procedures;
- ( 4 ) to be remunerated for work, to enjoy insurance and welfare benefits;
- ( 5 ) to enjoy safety of the person, property and residence as ensured by law;
- ( 6 ) to receive training;
- ( 7 ) to lodge petitions or complaints; and
- ( 8 ) to resign their posts.

#### Chapter IV Qualifications for a Public Procurator

Article 10 A public procurator must possess the following qualifications:

- ( 1 ) to be of the nationality of the People's Republic of China;
- ( 2 ) to have reached the age of 23;
- ( 3 ) to endorse the Constitution of the People's Republic of China;
- ( 4 ) to have fine political and professional quality and to be good in conduct;

( 5 ) to be in good health; and

( 6 ) to have worked in law for at least two years in the case of a graduate from a four-year course in the law speciality of an institution of higher education or a graduate from a four-year course in a non-law speciality of such an institution who possesses the professional knowledge of law, and to have worked in law for at least three years in the case of the said graduate to be appointed public procurator of the People's Procuratorate of a province, an autonomous region, or a municipality directly under the Central Government, or the Supreme People's Procuratorate; or to have worked in law for at least one year in the case of a person holding the Master of Law degree or Doctor of Law degree or a person holding a master's degree or doctor's degree of non-law speciality who possesses the professional knowledge of law, and to have worked in law for at least two years in the case of the said person to be appointed public procurator of the People's Procuratorate of a province, an autonomous region, or a municipality directly under the Central Government, or the Supreme People's Procuratorate.

The public procurators who, before this Law is implemented, do not possess the qualifications as provided by sub-paragraph 6 of the preceding paragraph shall receive training. The specific measures shall be formulated by the Supreme People's Procuratorate.

Where it is really difficult to apply the provisions in sub-paragraph 6 of the first paragraph regarding the academic qualifications for public procurators, such qualifications may, upon examination and approval by the Supreme People's Procuratorate and within a limited period of time, be relegated to include graduates from a two-or-three-year course in the law speciality of an institution of higher education.

Article 11 The following persons shall not hold the post of a public procurator:

( 1 ) to have been subjected to criminal punishment for commission of a crime; or

( 2 ) to have been discharged from public employment.

## Chapter V Appointment and Removal

Article 12 A public procurator shall be appointed or removed from the post in accordance with the limit of authority for, and procedures of, appointment or removal as prescribed by the Constitution and laws.

The Procurator-General of the Supreme People's Procuratorate shall be elected or removed by the National People's Congress. The Deputy Procurators-General, members of procuratorial committee and procurators shall be appointed or removed by the Standing Committee of the National People's Congress upon the recommendation of the Procurator-General of the Supreme People's Procuratorate.

The chief procurators of the local People's Procuratorates at various levels shall be elected or removed by the local People's Congress at the corresponding levels. The deputy chief procurators,

members of the procuratorial committees and procurators shall be appointed or removed by the standing committees of the people's congresses at the corresponding levels upon the recommendation of the chief procurators of those procuratorates.

The appointment or removal of the chief procurators of the local People's Procuratorates at the various levels must be reported to the chief procurators of the People's Procuratorates at the next higher level, who shall submit the matter to the standing committee of the people's congress at the level for approval.

The chief procurators, deputy chief procurators, members of the procuratorial committees and procurators of the branches of the People's Procuratorates set up in prefectures in the provinces or autonomous regions or set up in the municipalities directly under the Central Government shall be appointed or removed by the standing committees of people's congresses of the provinces, autonomous regions or municipalities directly under the Central Government upon the recommendation of the chief procurators of the People's Procuratorates of the provinces, autonomous regions or municipalities directly under the Central Government.

The assistant procurators of the People's Procuratorates shall be appointed or removed by the chief procurators of the procuratorates where they work.

The measures for the appointment or removal of the chief procurators, deputy chief procurators, members of the procuratorial committees and procurators of the special People's Procuratorates such as the military procuratorates shall be formulated by the Standing Committee of the National People's Congress separately.

Article 13 Persons to be appointed public procurators for the first time shall be selected, through strict examination and appraisal, from among those who have passed the uniform national judicial examination and who are the best qualified for the post, in conformity with the standards of having both ability and political integrity.

Persons to be appointed chief procurators or deputy chief procurators of People's Procuratorates shall be selected from among the best procurators and other people who are best qualified for the post.

Article 14 If a public procurator is found to be in any of the following circumstances, a report shall be submitted according to law concerning the removal of his or her post:

- ( 1 ) having forfeited the nationality of the People's Republic of China;
- ( 2 ) having been transferred out of this procuratorate;
- ( 3 ) having no need to maintain his or her original post after a change of post;
- ( 4 ) being determined to be incompetent in the post through appraisal;
- ( 5 ) being unable to perform the functions and duties of a public procurator for a long period of time due to poor health;
- ( 6 ) having retired from the post;

( 7 ) having resigned the post or having been dismissed; or

( 8 ) being disqualified from continuing to hold the post because of violation of discipline, law or commission of a crime.

Article 15 Where an elected chief procurator of a People's Procuratorate does not possess the qualifications as provided by this law, or a chief procurator of a People's Procuratorate is elected in violation of the statutory procedures, the chief procurator of a People's Procuratorate at the next higher level shall have the power to apply to the standing committee of the people's congress at that level for disapproval.

Article 16 Once the organ discovers that the appointment of a person as public procurator made by it is in violation of the provisions of this Law governing the qualifications for public procurators, it shall revoke the appointment. Where a procuratorate at a higher level discovers that the appointment of a person as public procurator made by a procuratorate at a lower level is in violation of the provisions governing the qualifications for public procurators, the former shall suggest to the latter that it revoke the appointment in accordance with law, or that it, in accordance with law, suggest to the standing committee of the people's congress at the same level that it revoke the appointment.

Article 17 The Procurator-General of the Supreme People's Procuratorate and the chief procurators of the People's Procuratorates of the provinces, autonomous regions or municipalities directly under the Central Government may make proposals to the standing committees of the people's congresses at the corresponding levels to remove or replace a chief procurator, a deputy chief procurator or a member of the procuratorial committee of a People's Procuratorate at lower level.

Article 18 No public procurators may concurrently be members of the standing committees of the people's congresses, or hold posts in administrative organs, judicial organs, enterprises or institutions, or serve as lawyers.

## Chapter VI Posts to Be Avoided

Article 19 Public procurators who are connected by husband-wife relationship, or who are directly related by blood, collaterally related within three generations, or closely related by marriage may not, at the same time, hold the following posts:

( 1 ) the chief procurator, deputy chief procurators, or members of the procuratorial committee in the same People's Procuratorate;

( 2 ) the chief procurator, deputy chief procurators, procurators or assistant procurators in the same People's Procuratorate;

( 3 ) the procurators or assistant procurators in the same work unit; or

( 4 ) the chief procurator, deputy chief procurators of the People's Procuratorates at the levels next to each other.

Article 20 No public procurator may within two years after leaving his or her post from a People's Procuratorate, serve as an agent ad litem or a defender in the capacity of a lawyer.

No public procurator may, after leaving his or her post from a People's Procuratorate, serve as an agent ad litem or a defender in a case being handled by the Procuratorate where he or she previously held a post.

No spouse or child of a public procurator may serve as an agent ad litem or a defender in a case being handled by the Procuratorate where the public procurator holds a post.

## Chapter VII Grades of Public Procurators

Article 21 Public procurators are divided into twelve grades.

The Procurator-General of Supreme People's Procuratorate is Procurator-in-Chief. Public procurators from the second grade to twelfth grade are composed of principal public procurators, senior public procurators and public procurators.

Article 22 Grades of public procurators shall be determined on the basis of their posts, their actual working ability and political integrity, their professional competence, their achievements in procuratorial work and their seniority.

Article 23 The grades of public procurators shall be established and the measures for their evaluation and promotion shall be formulated separately by the State.

## Chapter VIII Appraisal

Article 24 Appraisal of public procurators shall be conducted by the People's Procuratorates the public procurators belong to.

Article 25 The appraisal of public procurators shall be carried out objectively and impartially, through the combined efforts of the leaders and masses, and routinely and annually.

Article 26 The appraisal of public procurators shall include their achievements in procuratorial work, their ideological level and moral character, their competence in procuratorial work and their mastery of law theories, their attitude in and style of work. However, emphasis shall be laid on the achievements in procuratorial work.

Article 27 The results of the annual appraisal shall fall into three grades: excellent, competent and incompetent.

The results of appraisal shall be taken as the basis for award, punishment, training, removal or dismissal of a public procurator, and for readjustment of his or her grade and salary.

Article 28 A public procurator shall be informed of the result of the appraisal in written form. If the public procurator disagrees with the result, he or she may apply for reconsideration.

## Chapter IX Training

Article 29 Theoretical and professional training for public procurators shall be carried out in a planned way.

The principles of integrating theory with practice, giving lectures in light of the needs, and emphasizing practical results shall be applied in the training of public procurators.

Article 30 The public procurator colleges and universities of the State and other institutions for training public procurators shall, in accordance with the relevant regulations, undertake the task of training public procurators.

Article 31 The results of the studies of public procurators and appraisals made during their training shall be taken as one of the bases for their appointment and promotion.

## Chapter X Awards

Article 32 Public procurators who have made significant achievements and contributions in procuratorial work, or performed other outstanding deeds shall be rewarded.

The principle of combining moral encouragement with material reward shall be applied in rewarding public procurators.

Article 33 Public procurators who have any of the following achievements to their credit shall be rewarded:

- ( 1 ) having achieved notable successes in enforcing laws impartially in procuratorial work;
- ( 2 ) having made proposals for procuratorial work or proposals for the reform of procuratorial work that have been adopted and produced remarkable results;
- ( 3 ) having performed outstanding deeds in safeguarding the interests of the State, the collective and the people against heavy losses;



- ( 4 ) having performed outstanding deeds by bravely fighting against illegal or criminal acts;
- ( 5 ) having scored outstanding achievements in protecting State secrets and secrets of procuratorial work; or
- ( 6 ) having performed other meritorious deeds.

Article 34 The awards include: Citation for Meritorious Deeds, Merit Citation Class 3, Merit Citation class 2, Merit Citation class 1, and a title of honour.

The awards shall be authorized and procedures gone through in accordance with the relevant regulations.

## Chapter XI Punishment

Article 35 No public procurators may commit any of the following acts:

- ( 1 ) to spread statements damaging the prestige of the State; to join illegal organizations; to take part in such activities as assembly, procession and demonstration against the State; and to participate in strikes;
- ( 2 ) to embezzle money or accept bribes;
- ( 3 ) to bend law for personal gain;
- ( 4 ) to extort confessions by torture;
- ( 5 ) to conceal or falsify evidence;
- ( 6 ) to divulge State secrets or secrets of procuratorial work;
- ( 7 ) to abuse functions and powers; and to infringe upon the lawful rights and interests of natural persons, legal persons or other organizations;
- ( 8 ) to neglect his or her duty so as to wrongly handle a case or to cause heavy losses to the party concerned;
- ( 9 ) to delay the handling of a case so that work is adversely affected;
- ( 10 ) to take advantage of the functions and powers to seek gain for himself or herself or other people;
- ( 11 ) to engage in profit-making activities;
- ( 12 ) to meet the party concerned or his or her agent without authorization and attend dinners or accept presents given by the party concerned or his or her agent; or
- ( 13 ) to commit other acts in violation of law or discipline.

Article 36 A public procurator who has committed any of the acts listed in Article 35 of this law shall be given sanctions; if the case constitutes a crime, he or she shall be investigated for criminal responsibility.

Article 37 The sanctions include: a disciplinary warning, a demerit recorded, a grave demerit recorded, demotion, dismissal from the post and discharge from public employment.

The salary of a public procurator who has been dismissed from the post shall at the same time be reduced and his or her grade be demoted.

Article 38 A sanction shall be authorized and procedures gone through in accordance with the relevant regulations.

## Chapter XII Salary, Insurance and Welfare

Article 39 The salary system and scales for public procurators shall, in light of the characteristics of procuratorial work, be formulated by the State.

Article 40 The system under which the salaries of public procurators are increased regularly shall be practiced. The salary of a public procurator who has been confirmed through appraisal as being excellent or competent may be raised in accordance with the regulations; the salary of a public procurator who has made special contributions may be raised in advance in accordance with regulations.

Article 41 Public procurators shall enjoy procuratorial allowances, regional allowances and other allowances and insurance and welfare benefits as prescribed by the State.

## Chapter XIII Resignation and Dismissal

Article 42 If a public procurator requests resignation, he or she shall present an application in written form before he or she shall be removed in accordance with the procedures as provided by law.

Article 43 A public procurator shall be dismissed if he or she is found to be in any of the following circumstances:

- ( 1 ) to be confirmed by annual appraisal as being incompetent for two successive years;
- ( 2 ) to be unqualified for the present post and decline to accept other assignments;
- ( 3 ) to refuse to accept reasonable transfer, which is necessitated by restructuring of the procuratorial organ or reduction of the size of the staff;

( 4 ) to have stayed away from work without leave or to have overstayed his or her leave without good reason for fifteen days or more in succession, or for thirty days or more in a year aggregated; or

( 5 ) to fail to perform a public procurator's duty, and make no rectification after criticism.

Article 44 A judge who is dismissed shall be removed from the post in accordance with the procedures as provided by law.

## Chapter XIV Retirement

Article 45 The retirement system regarding public procurators shall, in light of the characteristics of procuratorial work, be formulated separately by the State.

Article 46 After retirement public procurators shall enjoy the insurance of old-age pension and other benefits as prescribed by the State.

## Chapter XV Petition and Complaint

Article 47 If a public procurator disagrees with the sanction given to him or her or the disposition of his or her case by a People's Procuratorate, he or she may, within 30 days from the date of receiving the decision on the sanction or disposition, apply for reconsideration to the organ which gave the sanction or disposed of the case and shall have the right to appeal to the organ at a level higher than the organ which gave the sanction or disposed of the case.

The organ that receives the appeal must make a decision on it in accordance with regulations.

During the period of reconsideration or petition, execution of a decision on a sanction or disposition made with regard to a public procurator shall not be suspended.

Article 48 If a State organ or any of its functionaries commits an act infringing upon the rights of a public procurator as provided by Article 9 of this law, the public procurator shall have the right to make a complaint.

If an administrative organ, a public organization or an individual interferes in a public procurator's performance of the procuratorial functions and duties according to law, that organ, organization or individual shall be investigated for responsibility according to law.

Article 49 The petition or complaint made by a public procurator shall be true to facts. If a public procurator makes up a story or lodges a false accusation against an innocent person, he or she shall be investigated for responsibility according to law.

Article 50 Where the sanction given to a public procurator or the disposition of his or her case is wrong, it shall be put right without delay; if it has damaged the public procurator's reputation, the reputation shall be rehabilitated, the ill effects shall be eliminated and an apology shall be made; if it has caused financial losses to the public procurator, compensation shall be made. The persons who are directly responsible for retaliation shall be investigated for responsibility according to law.

## Chapter XVI Commission for Examination and Assessment of Public Procurators

Article 51 A People's Procuratorate shall establish a commission for examination and assessment of public procurators.

The functions and duties of a commission for examination and assessment of public procurators are to guide the training, examination, appraisal and assessment of public procurators. Specific measures therefore shall be formulated separately.

Article 52 The number of persons on a commission for examination and assessment of public procurators shall be five to nine.

The chairman of a commission for examination and assessment of public procurators shall be assumed by the chief procurator of the procuratorate it belongs to.

## Chapter XVII Supplementary Provisions

Article 53 In light of the need of procuratorial work, the Supreme People's Procuratorate shall, in conjunction with the relevant departments, formulate measures to fix the proportion of public procurators to other staff members in the People's Procuratorates at different levels.

Article 54 The State institutes a uniform judicial examination system for persons to be appointed public procurators or judges for the first time, or to obtain the qualifications for lawyer. The judicial administration department under the State Council shall, in conjunction with the Supreme People's Procuratorate and the Supreme People's Court, formulate implementation measures for judicial examination. The judicial administration department under the State Council shall take charge of the implementation of the measures.

Article 55 Measures for the administration of the clerks of the People's Procuratorates shall be formulated by the Supreme People's Procuratorate.

The administrative judicial personnel of the People's Procuratorates shall be administered in accordance with the relevant regulations of the State.

Article 56 This law shall go into effect as of July 1, 1995.



# **Law of the People's Republic of China on the Control of the Exit and Entry of Citizens**

Adopted at the 13th Meeting of the Standing Committee of the Sixth National People's Congress on November 22, 1985 and promulgated by Order No. 32 of the President of the People's Republic of China on November 22, 1985

## Contents

### Chapter I General Provisions

### Chapter II Exit from the Country

### Chapter III Entry into the Country

### Chapter IV Administrative Organs

### Chapter V Penalties

### Chapter VI Supplementary Provisions

### Chapter I General Provisions

Article 1 This Law is formulated with a view to safeguarding the legitimate rights and interests of Chinese citizens with respect to their exit from and entry into China's territory and to promoting international exchange.

Article 2 Chinese citizens may leave or enter the country with valid passports or other valid certificates issued by the competent departments of the State Council or other departments authorized by them. They shall not be required to apply for visas.

Article 3 For exit and entry, Chinese citizens shall pass through open ports or other designated ports and shall be subject to inspection by the frontier inspection offices.

Article 4 After leaving the country, Chinese citizens may not commit any act harmful to the security, honour or interests of their country.

### Chapter II Exit from the Country

Article 5 Chinese citizens who desire to leave the country for private purposes shall apply to the public security organs of the city or county in which their residence is registered. Approval shall be granted except in cases prescribed in Article 8 of this Law.

The public security organs shall decide, within a specified time, whether to approve or disapprove the citizens' applications for leaving the country for private purposes, and shall notify the applicants accordingly.

Article 6 In the case of Chinese citizens leaving the country on official business, the units sending them abroad shall apply to the Ministry of Foreign Affairs or the local foreign affairs department authorized by the ministry for the citizens' exit certificates and acquire the certificates for them.

Article 7 In the case of seamen leaving the country to perform their duties, the Bureau of Harbour Superintendence or a harbour superintendent authorized by the bureau shall acquire the exit certificates for them.

Article 8 Approval to exit the country shall not be granted to persons belonging to any of the following categories:

- (1) defendants in criminal cases or criminal suspects confirmed by a public security organ, a people's procuratorate or a people's court;
- (2) persons who, as notified by a people's court, shall be denied exit owing to involvement in unresolved civil cases;
- (3) convicted persons serving their sentences;
- (4) persons undergoing rehabilitation through labour; and
- (5) persons whose exit from the country will, in the opinion of the competent department of the State Council, be harmful to state security or cause a major loss to national interests.

Article 9 The frontier inspection offices shall have the power to stop persons belonging to any of the following categories from leaving the country and to deal with them according to law:

- (1) holders of invalid exit certificates;
- (2) holders of exit certificates other than their own; and
- (3) holders of forged or altered exit certificates.

### Chapter III Entry into the Country

Article 10 Chinese citizens residing abroad who desire to return to China for permanent residence shall complete the relevant procedures at the Chinese diplomatic missions, consular offices or other agencies located abroad that are authorized by the Ministry of Foreign Affairs, or at the

public security organs of the relevant provinces, autonomous regions, or municipalities directly under the Central Government.

Article 11 After their entry into China, Chinese citizens who have come for permanent residence or employment shall register for prolonged residence in accordance with the provisions for the administration of residence. Those who have entered for a temporary stay shall register for temporary residence in accordance with the same provisions.

## Chapter IV Administrative Organs

Article 12 Passports for Chinese citizens going abroad on official business shall be issued by the Ministry of Foreign Affairs or by the local foreign affairs departments authorized by the Ministry. Seamen's papers shall be issued by the Bureau of Harbour Superintendence or a harbour superintendent authorized by the bureau. Passports for Chinese citizens going abroad for private purposes shall be issued by the Ministry of Public Security or by local public security organs authorized by the ministry.

Passports and certificates which Chinese citizens apply for abroad shall be issued by the Chinese diplomatic missions, consular offices or other agencies located abroad authorized by the Ministry of Foreign Affairs.

Article 13 The Ministry of Public Security, the Ministry of Foreign Affairs, the Bureau of Harbour Superintendence and other agencies that issue passports and certificates shall have the power to cancel passports and certificates issued by them or by their authorized agencies, or to declare such passports and certificates invalid.

## Chapter V Penalties

Article 14 Any person who, in violation of the provisions of this Law, leaves or enters the country illegally, forges or alters an exit or entry certificate, uses another person's certificate as his own or transfers his certificate may be given a warning or placed in detention for not more than ten days by a public security organ. If the circumstances of the case are serious enough to constitute a crime, criminal responsibility shall be investigated in accordance with the Law.

Article 15 If a citizen subject to the penalty of detention by a public security organ refuses to accept the penalty, he may, within 15 days of receiving notification, appeal to the public security organ at the next higher level, which shall make the final decision; he may also directly file suit in the local people's court.

Article 16 Where a state functionary charged with implementing this Law takes advantage of his position and power to extort and accept bribes, he shall be punished according to the Criminal



Law of the People's Republic of China and the Decision of the Standing Committee of the National People's Congress Regarding the Severe Punishment of Criminals who Seriously Undermine the Economy. If he has committed any other act involving violation of the Law and dereliction of duty which is serious enough to constitute a crime, his criminal responsibility shall be investigated according to the relevant provisions of the Criminal Law of the People's Republic of China.

## Chapter VI Supplementary Provisions

Article 17 Control measures governing Chinese citizens' travels to and from the Hongkong or the Macao region shall be separately formulated by the relevant departments of the State Council.

Article 18 Transitory exit from and entry into China by Chinese citizens residing in areas bordering on a neighbouring country shall be handled according to any relevant agreements between the two countries or, in the absence of such agreements, according to the relevant provisions of the Chinese Government.

The exit and entry of crews of transnational trains, crews of civil aviation planes operating international flights and the railway functionaries working in China's border areas shall be handled according to relevant agreements and provisions.

Article 19 The Ministry of Public Security, the Ministry of Foreign Affairs and the Ministry of Communications shall, pursuant to this Law, formulate rules for its implementation, which shall go into effect after being submitted to and approved by the State Council.

Article 20 This Law shall go into effect as of February 1, 1986.

# **Law of the People's Republic of China on Control of the Entry and Exit of Aliens**

Adopted at the 13th Meeting of the Standing Committee of the Sixth National People's Congress November 22, 1985 and promulgated by Order No. 31 of the President of the People's Republic of China on November 22, 1985

## Contents

Chapter I General Provisions

Chapter II Entry into the Country

Chapter III Residence

Chapter IV Travel

Chapter V Exit from the Country

Chapter VI Administrative Organs

Chapter VII Penalties

Chapter VIII Supplementary Provisions

## Chapter I General Provisions

Article 1 This Law is formulated with a view to safeguarding the sovereignty of the People's Republic of China, maintaining its security and public order and facilitating international exchange.

This Law is applicable to aliens entering, leaving and transiting the territory of the People's Republic of China and to those residing and travelling in China.

Article 2 Aliens must obtain the permission of the competent authorities of the Chinese Government in order to enter, transit or reside in China.

Article 3 For entry, exit and transit, aliens must pass through ports open to aliens or other designated ports and must be subject to inspection by the frontier inspection offices.

For entry, exit and transit, foreign-owned means of transport must pass through ports open to aliens or other designated ports and must be subject to inspection and supervision by the frontier inspection offices.

Article 4 The Chinese Government shall protect the lawful rights and interests of aliens on Chinese territory.

Freedom of the person of aliens is inviolable. No alien may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrest must be made by a public security organ or state security organ.

Article 5 Aliens in China must abide by Chinese laws and may not endanger the state security of China, harm public interests or disrupt public order.

## Chapter II Entry into the Country

Article 6 For entry into China, aliens shall apply for visas from Chinese diplomatic missions, consular offices or other resident agencies abroad authorized by the Ministry of Foreign Affairs. In specific situations aliens may, in compliance with the provisions of the State Council, apply for visas to visa-granting offices at ports designated by the competent authorities of the Chinese Government.

The entry of nationals from countries having visa agreements with the Chinese Government shall be handled in accordance with those agreements.

In cases where another country has special provisions for Chinese citizens entering and transiting that country, the competent authorities of the Chinese Government may adopt reciprocal measures contingent on the circumstances.

Visas are not required for aliens in immediate transit on connected international flights who hold passenger tickets and stay for no more than 24 hours in China entirely within airport boundaries. Anyone desiring to leave the airport temporarily must obtain permission from the frontier inspection office.

Article 7 When applying for various kinds of visas, aliens shall present valid passports and, if necessary, provide pertinent evidence.

Article 8 Aliens who have been invited or hired to work in China shall, when applying for visas, produce evidence of the invitation or employment.

Article 9 Aliens desiring to reside permanently in China shall, when applying for visas, present status-of-residence identification forms. Applicants may obtain such forms from public security organs at the place where they intend to reside.

Article 10 The competent authorities of the Chinese Government shall issue appropriate visas to aliens according to the purposes stated in their entry applications.

Article 11 When an aircraft or a vessel navigating international routes arrives at a Chinese port, the captain or his agent must submit a passenger name list to the frontier inspection office; a foreign aircraft or vessel must also provide a name list of its crew members.

Article 12 Aliens who are considered a possible threat to China's state security and public order shall not be permitted to enter China.

### Chapter III Residence

Article 13 For residence in China, aliens must possess identification papers or residence certificates issued by the competent authorities of the Chinese Government.

The term of validity of identification papers or residence certificates shall be determined according to the purposes of entry.

Aliens residing in China shall submit their certificates to the local public security organs for examination within the prescribed period of time.

Article 14 Aliens who, in compliance with Chinese laws, find it necessary to establish prolonged residence in China for the purpose of investing in China or engaging in cooperative projects with Chinese enterprises or institutions in the economic, scientific, technological and cultural fields, or for other purposes, are eligible for prolonged or permanent residence in China upon approval by the competent authorities of the Chinese Government.

Article 15 Aliens who seek asylum for political reasons shall be permitted to reside in China upon approval by the competent authorities of the Chinese Government.

Article 16 Aliens who fail to abide by Chinese laws may have their period of stay in China curtailed or their status of residence in China annulled by the competent authorities of the Chinese Government.

Article 17 For a temporary overnight stay in China, aliens shall complete registration procedures pursuant to the relevant provisions.

Article 18 Aliens holding residence certificates who wish to change their place of residence in China must complete removal formalities pursuant to the relevant provisions.

Article 19 Aliens who have not acquired residence certificates or who are on a study programme in China may not seek employment in China without permission of the competent authorities of the Chinese Government.

### Chapter IV Travel

Article 20 Aliens who hold valid visas or residence certificates may travel to places open to aliens as designated by the Chinese Government.

Article 21 Aliens desiring to travel to places closed to aliens must apply to local public security organs for travel permits.

## Chapter V Exit from the Country

Article 22 For exit from China, aliens shall present their valid passports or other valid certificates.

Article 23 Aliens belonging to any of the following categories shall not be allowed to leave China:

- (1) defendants in criminal cases or criminal suspects confirmed by a public security organ, a people's procuratorate or a people's court;
- (2) persons who, as notified by a people's court, shall be denied exit owing to involvement in unresolved civil cases; and
- (3) persons who have committed other acts in violation of Chinese law who have not been dealt with and against whom the competent authorities consider it necessary to institute prosecution.

Article 24 Frontier inspection offices shall have the power to stop aliens belonging to any of the following categories from leaving the country and to deal with them according to law:

- (1) holders of invalid exit certificates;
- (2) holders of exit certificates other than their own; and
- (3) holders of forged or altered exit certificates.

## Chapter VI Administrative Organs

Article 25 China's diplomatic missions, consular offices and other resident agencies abroad authorized by the Ministry of Foreign Affairs shall be the Chinese Government's agencies abroad to handle aliens' applications for entry and transit.

The Ministry of Public Security, its authorized local public security organs, the Ministry of Foreign Affairs and its authorized local foreign affairs departments shall be the Chinese Government's agencies in China to handle aliens applications for entry, transit, residence and travel.

Article 26 The authorities handling aliens applications for entry, transit, residence and travel shall have the power to refuse to issue visas and certificates or to cancel visas and certificates already issued or declare them invalid.

The Ministry of Public Security and the Ministry of Foreign Affairs may, when necessary, alter decisions made by their respectively authorized agencies.

Article 27 An alien who enters or resides in China illegally may be detained for examination or be subjected to residential surveillance or deportation by a public security organ at or above the county level.

Article 28 While performing their duties, foreign affairs police of the public security organs at or above the county level shall have the power to examine the passports and other certificates of aliens. When conducting such examinations, the foreign affairs police shall produce their own service certificates, and relevant organizations or individuals shall have the duty to offer them assistance.

## Chapter VII Penalties

Article 29 If a person, in violation of the provisions of this Law, enters or leaves China illegally, establishes illegal residence or makes an illegal stopover in China, travels to places closed to aliens without a valid travel document, forges or alters an entry or exit certificate, uses another person's certificate as his own or transfers his certificate, he may be penalized by a public security organ at or above the county level with a warning, a fine or detention for not more than ten days. If the circumstances of the case are serious enough to constitute a crime, criminal responsibility shall be investigated in accordance with the law.

If an alien subject to a fine or detention by a public security organ refuses to accept the penalty, he may, within 15 days of receiving notification, appeal to the public security organ at the next higher level, which shall make the final decision; he may also directly file suit in the local people's court.

Article 30 In cases where a person commits any of the acts stated in Article 29 of this Law, if the circumstances are serious, the Ministry of Public Security may impose a penalty by ordering him to leave the country within a certain time or may expel him from the country.

## Chapter VIII Supplementary Provisions

Article 31 For the purpose of this Law the term "alien" means any person not holding Chinese nationality according to the Nationality Law of the People's Republic of China.

Article 32 Transitory entry into and exit from China by aliens who are nationals of a country adjacent to China and who reside in areas bordering on China shall be handled according to any relevant agreements between the two countries or, in the absence of such agreements, according to the relevant provisions of the Chinese Government.

Article 33 The Ministry of Public Security and the Ministry of Foreign Affairs shall, pursuant to this Law, formulate rules for its implementation, which shall go into effect after being submitted to and approved by the State Council.

Article 34 Affairs concerning members of foreign diplomatic missions and consular offices in the People's Republic of China and other aliens who enjoy diplomatic privileges and immunities, after their entry into China, shall be administered in accordance with the relevant provisions of the State Council and its competent departments.

Article 35 This Law shall go into effect on February 1, 1986.

## **Customs Law of the People's Republic of China**

Adopted at the 19th Meeting of the Standing Committee of the Sixth National People's Congress and promulgated by Order No. 51 of the President of the People's Republic of China on January 22, 1987, amended in accordance with the Decision on Amending the Customs Law of the People's Republic of China adopted at the 16th Meeting of the Standing Committee of the Ninth National People's Congress on July 8, 2000

### Contents

Chapter I General Provisions

Chapter II Inward and Outward Means of Transport

Chapter III Inward and Outward Goods

Chapter IV Inward and Outward Articles

Chapter V Customs Duties

Chapter VI Customs Bond

Chapter VII Supervision over Law-Enforcement

Chapter VIII Legal Responsibilities

Chapter IX Supplementary Provisions

### Chapter I General Provisions

Article 1 This Law is formulated for the purpose of safeguarding State sovereignty and national interests, strengthening supervision and control by the Customs, promoting exchanges with foreign countries in economic affairs, trade, science, technology and culture, and ensuring socialist modernization.

Article 2 The Customs of the People's Republic of China is a State organ responsible for supervision and control over all arrivals in and departures from the Customs territory (hereinafter referred to as the territory in short). It shall, in accordance with this Law and other related laws and administrative regulations, exercise control over the means of transport, goods, travellers' luggage, postal items and other articles entering or leaving the territory (hereinafter referred to as inward and outward means of transport, goods and articles in short), collect Customs duties and other taxes and fees, prevent and suppress smuggling, prepare Customs statistics and handle other Customs operations.



Article 3 The State Council sets up the General Customs Administration, which exercises unified administration of the Customs offices throughout the country.

Customs offices are set up by the State at ports open to foreign trade and at places where concentrated Customs operations are required for supervision and control. The subordination of one Customs office to another shall not be restricted by administrative divisions.

The Customs offices exercise their functions and powers independently in accordance with law and are accountable to the General Customs Administration.

Article 4 In the General Customs Administration, the State sets up a special police department, which is in charge of the investigation of offences of smuggling and is staffed with professional anticontraband policemen, who are responsible for conducting investigations, making detentions and arrests, and carrying out preliminary inquiries into smuggling cases under the jurisdiction of the said department.

The police department responsible for the investigation of smuggling offences shall, in accordance with the Criminal Procedure Law of the People's Republic of China, perform its duties of conducting investigations, making detentions and arrests and carrying out preliminary inquiries.

The police department responsible for the investigation of smuggling offences may, in accordance with the relevant regulations of the State, set up its branch offices, which shall, in accordance with law, hand over to the competent People's Procuratorate for prosecution the smuggling cases which are under their jurisdiction and the investigation of which they have completed.

Local public security organs at different levels shall cooperate with the Customs police department responsible for the investigation of smuggling offences in the latter's performance of its duties in accordance with law.

Article 5 The State maintains an anti-contraband mechanism under which joint action is to be taken, smuggling cases are to be handled in a unified manner and smuggling is to be suppressed in an all-round way. The Customs is responsible for mobilizing, coordinating and regulating efforts against smuggling. The regulations in this regard shall be formulated separately by the State Council.

Smuggling cases discovered by relevant administrative law-enforcement departments and involving administrative penalties shall be handed over to the Customs for its handling in accordance with law; suspected offences shall be transferred to the Customs police department responsible for the investigation of smuggling offences and local public security organs to be dealt with according to the division of their jurisdiction and to legal procedures.

Article 6 The Customs shall exercise the following powers:

(1) to check inward and outward means of transport, examine inward and outward goods and articles, and detain those entering or leaving the territory in violation of this Law or other relevant laws and administrative regulations;

(2) to examine the identification documents of persons entering or leaving the territory, interrogate the persons suspected of violating this Law or other relevant laws and administrative regulations and investigate the illegal activities of such persons;

(3) to examine and duplicate contracts, invoices, account books, bills, records, documents, business letters and cables, audio and video products and other material that are related to the inward and outward means of transport, goods and articles, and detain those involved in the means of transport, goods or articles entering or leaving the territory in violation of this Law or other relevant laws and administrative regulations;

(4) to search, within a Customs surveillance zone and the specified coastal or border area in the vicinity of a Customs office, the means of transport suspected of being involved in smuggling, and the places suspected of concealing smuggled goods and articles, and search the body of the persons suspected of smuggling; to detain, with the approval of the director of a Customs office directly under the General Customs Administration or the director of a Customs office subordinate to and authorized by the former, the means of transport, goods or articles suspected of being involved in smuggling, and the persons suspected of being guilty of smuggling; the length of time for detention of the persons suspected of being guilty of smuggling shall be not longer than 24 hours, which may be extended to 48 hours under special circumstances.

When investigating smuggling cases beyond the Customs surveillance zone and the specified coastal or border area in the vicinity of a Customs office, the Customs may, with the approval of the director of a Customs office directly under the General Customs Administration or the director of a Customs office subordinate to and authorized by the former, search the means of transport suspected of being involved in smuggling and, with the exception of citizens' residence, the places suspected of concealing smuggled goods or articles, which shall be conducted in the presence of the parties concerned. Where the parties fail to show up, the Customs may effect the search in the presence of witnesses and may detain the means of transport, goods or articles suspected of smuggling which is supported by evidence.

The specified coastal or border area in the vicinity of a Customs office shall be delimited by the General Customs Administration and the public security department under the State Council in conjunction with the relevant people's government at the provincial level;

(5) When investigating smuggling cases, the Customs may, with the approval of the director of a Customs office directly under the General Customs Administration or the director of the Customs office subordinate to and authorized by the former, check up on the bank accounts and remittances the suspected entities and persons have in financial institutions or postal services;

(6) to chase the means of transport or persons defying and escaping from Customs control to places beyond a Customs surveillance zone or the specified coastal or border area in the vicinity of a Customs office and bring them back to be dealt with;

(7) to be provided with arms for the performance of its duties. Rules governing the carrying and use of arms by Customs officers shall be formulated by the General Customs Administration in conjunction with the public security department under the State Council and submitted to the State Council for approval; and

(8) to exercise other powers given to the Customs by law and administrative regulations.

Article 7 Local authorities and all departments shall support the Customs offices in exercising their functions and powers according to law; they may not illegally interfere in the Customs enforcement of law.

Article 8 All inward and outward means of transport, goods and articles shall enter or leave the territory at a place where there is a Customs office. Under special circumstances where it is necessary to enter or leave the territory temporarily at a place where there is no Customs office, the matter shall be subject to approval by the State Council or the department authorized by it, and Customs formalities shall be duly completed in accordance with this Law.

Article 9 Unless otherwise provided for, the declaration of import or export goods and the payment of duties may be made by the consignees or consigners themselves, and such formalities may also be completed by their entrusted Customs brokers that have registered with the permission of the Customs.

The declaration of inward and outward articles and payment of duties on them may be made by the owners of the articles themselves or by the persons they have entrusted with the work.

Article 10 Any Customs broker entrusted by the consignee or consigner for import or export goods to complete Customs formalities in the name of the principal shall produce to the Customs a letter of authorization signed by the principal and abide by all the provisions of this Law governing the principal.

Where a Customs broker entrusted by the consignee or consigner for import or export goods and completes the Customs formalities in its own name, it shall bear the same legal liability as the consignee or consigner shall do.

The principal that entrusts a Customs broker to complete the Customs formalities shall provide the broker with true information regarding the items it entrusts the broker to declare to the Customs. The Customs broker so entrusted shall, as appropriate, verify the authenticity of the information provided by the principal.

Article 11 The consignees or consigners for import or export goods and the Customs brokers engaged in Customs declaration shall register with the Customs according to law. Individuals engaged in Customs declaration are required to obtain the qualifications in this field in accordance with law. No broker that has not registered with the Customs in accordance with law and no individual that has not obtained the qualifications for Customs declaration may engage in work in this field.

No Customs brokers or individuals engaged in Customs declaration may illegally make Customs declaration on behalf of others or go beyond their scope of business.

Article 12 When the Customs performs its duty in accordance with law, the entity or individual concerned shall give true answers to inquiries made by the Customs and be cooperative. No entity or individual may obstruct the Customs in the course of performing its duty.

Where Customs officers meet with violent resistance while performing their duty, public security organs and the People's Armed Police units performing related tasks shall provide assistance.

Article 13 The Customs shall establish a system whereby any activities designed to evade Customs control in violation of the provisions of this Law shall be reported.

All entities and individuals shall have the right to report to the Customs activities violating the provisions of this Law.

The Customs shall give moral encouragement or material rewards to entities or individuals that perform meritorious deeds in reporting offences against this Law or helping to track down and seize the offenders.

The Customs shall keep the reporters secret.

## Chapter II Inward and Outward Means of Transport

Article 14 When a means of transport arrives at or departs from a place where there is a Customs office, the person in charge of the means of transport shall make a truthful declaration to the Customs, submit the relevant papers for examination and accept Customs control and inspection.

The inward and outward means of transport staying at a place with a Customs office shall not depart from it without permission by the Customs.

Before an inward or outward means of transport moves from one place with a Customs office to another place with a Customs office, it shall comply with the control requirements of the Customs and complete Customs formalities. No means of transport may change its course and leave the territory unless it has cleared the Customs.

Article 15 The inward means of transport which has entered the territory but has not made its declaration to the Customs or the outward means of transport which has cleared the Customs but has not left the territory shall move along the routes specified by competent communications authorities. In the absence of such specifications, the routes shall be designated by the Customs.

Article 16 The Customs shall be notified in advance either by the person in charge of the means of transport or by the relevant transport and communications department of such details as when an inward or outward vessel, train or aircraft will arrive and depart, where it will stay, where it will move to during its stay and when the loading or unloading of goods and articles will take place.

Article 17 The loading and unloading of export and import goods and articles onto and from any means of transport and the embarking and disembarking of its passengers shall be subject to Customs control.

Upon completion of such loading and unloading, the person in charge of the means of transport shall submit to the Customs documents and records which reflect the actual situation of the loading and unloading.

Articles carried by individuals embarking on or disembarking from an outward or inward means of transport shall be truthfully declared to the Customs and be subject to Customs inspection.

Article 18 When an inward or outward means of transport is being inspected by the Customs, the person in charge of the means of transport shall be present, and open the holds, cabins, rooms or doors of the means of transport at the request of the Customs. Where smuggling is suspected, the person in charge of the means of transport shall also open or dismantle the part thereof which may conceal smuggled goods and articles or move the goods and materials.

Where work requires, the Customs may dispatch officers to perform duties on board the means of transport. The person in charge of the means of transport shall provide them with conveniences.

Article 19 No inward means of transport belonging to countries or regions outside the territory nor outward means of transport belonging to entities inside the territory may be transferred or devoted to other uses prior to completion of Customs formalities and payment of Customs duties.

Article 20 For inward and outward vessels and aircraft to concurrently engage in transportation of goods and passengers within the territory, Customs approval shall be obtained and requirements for Customs control shall be fulfilled.

Customs formalities shall be completed for an inward and outward means of transport to shift to transport business within the territory.

Article 21 No coastal transport vessels, fishing boats or ships engaged in special operations at sea may, without approval of the Customs, carry, obtain on an exchange basis, purchase, sell or transfer inward or outward goods and articles.

Article 22 When, owing to force majeure, an inward or outward vessel or aircraft anchors, lands, jettisons or discharges goods or articles at a place without a Customs office, the person in charge of the means or transport shall immediately report to the Customs office nearby.

### Chapter III Inward and Outward Goods

Article 23 Import goods, throughout the period from the time of arrival in the territory to the time of Customs clearance, export goods, throughout the period from the time of declaration to the Customs to the time of departure from the territory, and transit, transshipment and through goods, throughout the period from the time of arrival in the territory to the time of departure from the territory shall be subject to Customs control.

Article 24 The consignee for import goods and the consigner for export goods shall make a truthful declaration and submit the import or export license and relevant papers to the Customs for

inspection. In the absence of an import or export license, no goods whose importation is restricted by the State may be released. Specific measures for handling such matters shall be formulated by the State Council.

Declaration of import goods shall be made to the Customs by the consignee within 14 days from the date of the declaration of the arrival of the means of transport, and declaration of export goods shall be made by the consigner upon the arrival of the goods at the Customs surveillance zone and 24 hours prior to loading, unless otherwise specially approved by the Customs.

Where the consignee fails to declare the import goods within the time limit prescribed in the preceding paragraph, a fee for delayed declaration shall be imposed by the Customs.

Article 25 Declaration forms made of paper or electronic means shall be used for completing Customs formalities for import and export goods.

Article 26 After acceptance by the Customs, the declaration forms and documents as well as their contents may not be changed or withdrawn unless the reason given is really justifiable and the Customs approves.

Article 27 Prior to declaration, the consignee for the import goods may, upon approval of the Customs, check the goods or draw samples. Samples of goods that need to be quarantined according to law shall be drawn after the goods pass the quarantine.

Article 28 All import and export goods shall be subject to Customs examination. While the examination is being carried out, the consignee for the import goods or the consigner for the export goods shall be present and responsible for moving the goods and opening and restoring the package. The Customs may examine or re-examine the goods or take samples from them straightaway in the absence of the consignee or the consigner whenever it considers this necessary.

Import and export goods may be exempted from examination if an application has been made by the consignee or consigner and approved by the General Customs Administration.

Article 29 Unless specially approved by the Customs, import and export goods shall be released upon the Customs endorsement only after the consignee or consigner has paid the duties or provided a bond.

Article 30 Where the consignee for import goods fails to declare the import goods to the Customs within three months from the date of the declaration of the arrival of the means of transport, the goods shall be taken over and sold off by the Customs in accordance with law. After the costs of transport, loading, unloading and storage and the duties and taxes are deducted from the money obtained from the sale, the remaining sum, if any, shall be returned to the consignee provided that he submits an application to the Customs within one year from the date of the sale of the goods; the remaining sum for those goods the importation of which is restricted by the State and a license for which is required but cannot be provided shall not be returned. In cases where nobody applies within the time limit or the sum is not to be returned, the money shall be turned over to the State Treasury.

For inward goods that are misdischarged or over-discharged, which is confirmed by the Customs, the person in charge of the means of transport carrying the goods or the consignee or the consigner shall, within three months from the date the goods are discharged, complete the necessary formalities for taking out of the territory or importing such goods. When necessary, an extension of three months may be granted upon approval by the Customs. Where the formalities are not completed within the time limit, the goods shall be disposed of by the Customs in accordance with the provisions in the preceding paragraph.

Where goods mentioned in the preceding two paragraphs are not suitable for storage over a long period, the Customs may, according to actual circumstances, dispose of them before the expiration of the the time limit.

Import goods declared to be abandoned by the consignee or the owner shall be taken over and sold off by the Customs in accordance with law. The money thus obtained shall be turned over to the State Treasury after the costs of transport, loading, unloading and storage are deducted.

Article 31 Goods that are temporarily imported or exported with the approval of the Customs shall be exported or imported within six months. Under special circumstances an extension may be granted with the approval of the Customs.

Article 32 Anyone who wishes to engage in storing, processing, assembling, exhibiting, transporting or consigning bonded goods or running duty free shops shall meet the requirements for Customs control and obtain approval from and register with the Customs.

For the transfer of ownership of the bonded goods, their shift to other places, or their entering or leaving the bonded premises, relevant Customs formalities shall be completed, and the matter shall be subject to Customs control and examination.

Article 33 Enterprises that are engaged in processing trade are required to register with the Customs with the relevant documents of approval and contracts for processing trade. The material consumption per finished product for the processing trade shall be assessed and fixed by the Customs in accordance with relevant regulations.

The finished products for processing trade shall be exported within the specified time limit. For those imported materials used for the purpose that are bonded with approval given in accordance with State regulations, formalities for the records of bond shall be written off with the Customs; where duties are collected in advance, formalities for the drawback of the duties paid shall be completed with the Customs in accordance with law.

Where the bonded materials imported for processing trade or the finished products that are, for one reason or another, sold on the domestic market instead of exported, the Customs shall, on the basis of the documents of approval for domestic marketing and in accordance with law, levy duties on the said imported materials. For materials the importation of which is restricted by State regulations, certificates of import license shall, in addition, be produced to the Customs.

Article 34 Control over the special Customs surveillance zones, such as the bonded areas established in the territory of the People's Republic of China with the approval of the State Council, shall be exercised by the Customs in accordance with relevant State regulations.

Article 35 Customs formalities for import goods shall be completed by the consignee at the Customs office at the place where the goods enter the territory; those for export goods shall be completed by the consigner at the Customs office at the place where the goods depart from the territory.

If applied for by the consignee or the consigner and approved by the Customs, Customs formalities for import goods may be completed at the named place of destination where there is a Customs office, and those for export goods at the place of departure where there is a Customs office. The transport of such goods from one place with a Customs office to another shall comply with the control requirements of the Customs. When necessary, the goods may be transported under the escort of the Customs.

Where the goods are transported into or out of the territory by means of electric cables, pipelines or other special means of conveyance, the entities concerned shall, at regular intervals, declare to the designated Customs office and complete Customs formalities as required.

Article 36 All transit, transshipment and through goods shall be truthfully declared by the person in charge of the means of transport to the Customs office at the place where the goods enter the territory, and shall be shipped out of the territory within the specified time limit.

The Customs may examine such goods whenever it considers this necessary.

Article 37 Without permission of the Customs, no goods under Customs control may be opened, taken, delivered, forwarded, transposed, repacked, mortgaged, hypothecated or held as a lien, nor may their ownership be transferred or their labels replaced, nor may they be used for other purposes or disposed of by other means.

No seals affixed by the Customs may be opened or broken by any person without Customs authorization.

Before a People's Court proceeds to make a judgement or ruling with regard to the goods under Customs control or an administrative law-enforcing authority concerned makes a decision to dispose of such goods, it shall order the person concerned to complete all necessary Customs formalities.

Article 38 The enterprises engaged in storing goods that are under Customs control shall register with the Customs and complete the formalities for receipt and delivery of goods in accordance with Customs regulations.

The storage of goods under Customs control at a place outside a Customs surveillance zone shall be subject to Customs approval and control.

Where the provisions of the two preceding paragraphs are violated or damage or loss is caused to the goods under Customs control during the period when the said goods are being kept, unless



caused by force majeure, the person who is obligated to keep the goods shall perform the obligation of paying the appropriate duties and bear legal liability.

Article 39 Control measures for inward and outward containers, for the salvage of inward and outward goods and sunken vessels, for inward and outward goods involved in small volumes of border transactions and for inward and outward goods not specified in this Law shall be separately formulated by the General Customs Administration on its own or in conjunction with the departments concerned under the State Council.

Article 40 With regard to inward and outward goods and articles which are banned or restricted by State regulations, the Customs shall exercise control over them in accordance with laws, administrative regulations, regulations laid down by the State Council, or regulations laid down by the relevant departments under the State Council as authorized by laws or administrative regulations. Specific measures for such control shall be formulated by the General Customs Administration.

Article 41 The origin of inward and outward goods shall be determined in accordance with the State rules of origin.

Article 42 Import and export goods shall be classified in accordance with the State regulations regarding the classification of commodities.

The Customs may ask the consignee for import goods and the consigner for export goods to provide it with information needed for determining their classification. Whenever necessary, the Customs may make arrangements for analysis and inspection and take the results it confirms as the basis for classification.

Article 43 The Customs may, on the basis of the written application submitted by the person engaged in foreign trade, make an administrative ruling in advance regarding such matters as classification of the goods to be imported or exported.

The administrative ruling regarding the classification of commodities shall be applicable to similar goods to be imported or exported.

The administrative ruling regarding such matters as the classification of commodities made by the Customs shall be promulgated.

Article 44 The Customs shall, in accordance with laws and administrative regulations, protect the intellectual property right relating to import and export goods.

Where it is necessary to declare to the Customs the status of intellectual property right, the consignee for import goods and the consigner for export goods as well as their agents shall, in accordance with State regulations, make a truthful declaration to the Customs and produce supporting documents for the lawful use of the right.

Article 45 The Customs may, within the period of three years from the date of release of import or export goods or within the period when the bonded goods or the import goods the duties on which are reduced or remitted are under Customs control and three years thereafter, examine the

account books, accounting vouchers, declaration documents, other relevant information and import and export goods of the enterprises and institutions directly related to the import and export goods. The specific measures shall be formulated by the State Council.

#### Chapter IV Inward and Outward Articles

Article 46 Inward and outward luggage carried by individuals and inward and outward postal items shall be limited to reasonable quantities for personal use and shall be subject to Customs control.

Article 47 All inward and outward articles shall be truthfully declared to the Customs by the owner and shall be subject to Customs examination.

No person may, without authorization, open or damage the seals affixed by the Customs.

Article 48 The loading, unloading, transshipment and transit of inward and outward mailbags shall be subject to Customs control. A waybill shall be submitted to the Customs by the postal service.

The postal service shall inform the Customs in advance of the schedule for the opening and sealing of international mailbags. The Customs shall, on schedule, dispatch officers to exercise control and conduct examination on the spot.

Article 49 Inward and outward postal items shall be posted or delivered by the postal service concerned only after they have been examined and released by the Customs.

Article 50 Articles registered with the Customs and permitted by it to temporarily enter or leave the territory duty-free shall be taken out of or brought into the territory by the owner.

Without Customs approval, no persons passing through the territory may leave in the territory the articles they bring in.

Article 51 Inward and outward articles declared to be abandoned by the owner, articles for which the Customs formalities are not completed or to which no one makes a claim within the time limit specified by the Customs, and inward postal items which can neither be delivered nor be returned shall be disposed of by the Customs in accordance with the provisions of Article 30 of this Law.

Article 52 Inward and outward articles for official or personal use by foreign missions or personnel enjoying diplomatic privileges and immunities shall be dealt with in accordance with relevant laws and administrative regulations.

#### Chapter V Customs Duties

Article 53 Customs duties shall, in accordance with law, be levied by the Customs on goods permitted to be imported or exported and on articles permitted to enter or leave the territory.

Article 54 The consignee for import goods, the consigner for export goods and the owner of inward and outward articles shall be the persons obligated to pay Customs duties.

Article 55 The dutiable price for import and export goods shall be determined after examination by the Customs on the basis of the transaction value of the goods. Where it is impossible to ascertain the transaction value, the dutiable price shall be assessed by the Customs in accordance with law.

The dutiable price for import goods shall consist of the value of the goods, the cost of transport and the charges associated with the transport of the goods and the cost of insurance, which are paid before the goods are unloaded at the entering point of the territory of the People's Republic of China; the dutiable price for export goods shall consist of the value of the goods, the cost of transport and the charges associated with the transport of the goods, which are paid before the goods are loaded at the leaving point of the territory of the People's Republic of China, as well as the cost of insurance - from all of which the amount of export duties shall be deducted.

The dutiable price for inward and outward articles shall be determined by the Customs in accordance with law.

Article 56 Duty reduction or exemption shall be granted to the following import and export goods and inward and outward articles:

- (1) advertising items and trade samples of no commercial value;
- (2) materials presented free of charge by foreign governments or international organizations;
- (3) goods to which damage or loss has caused prior to Customs release;
- (4) articles of a quantity or value within the fixed limit;
- (5) other goods and articles specified by law as items for duty reduction or exemption; and
- (6) goods and articles specified as items for duty reduction or exemption by international treaties to which the People's Republic of China is either a contracting party or an acceding party.

Article 57 Duty reduction or exemption may be granted to import and export goods of specific areas and specific enterprises or for specific purposes. The scope of and the measures for such reduction or exemption shall be defined and formulated by the State Council.

All import goods to which duty reduction or exemption is granted in accordance with the preceding paragraph shall be used only in specific areas and specific enterprises or for specific purposes. They may not be used otherwise unless Customs approval is obtained and duties are duly paid.

Article 58 Temporary duty reduction or exemption to be granted to goods other than the ones as specified in Article 56 and the first paragraph of Article 57 of this Law shall be decided by the State Council.

Article 59 After the consignee or consigner has paid to the Customs a deposit of an amount equal to the duties or provide a bond, temporary duty exemption shall be granted to goods that are temporarily imported or exported with the approval of the Customs and to bonded goods that are imported with special permission.

Article 60 The person obligated to pay Customs duties for import or export goods shall pay the duties within 15 days from the date the Customs issues the memorandum of payment. If the person fails to do so within the time limit, a fee for delayed payment shall be imposed by the Customs. Where the person obligated to pay Customs duties fails to do so or the bondsman fails to provide the bond within three months, the Customs may, upon approval of the director of the Customs office directly under the General Customs Administration or the director of a Customs office subordinate to and authorized by the former, take the following enforcement measures:

- (1) to notify in writing the bank where the person or bondsman concerned has opened an account or other financial institution to deduct the amount of duties due from his deposits;
- (2) to sell off the dutiable goods in accordance with law to offset the duties payable with the proceeds; and
- (3) to detain and sell off in accordance with law the goods or other property of the person or bondsman concerned to the tune of the duties payable to offset the duties with the proceeds;

While taking enforcement measures, the Customs shall, by compulsory means, make the obligatory duty payer or the bondsman who fails to pay the fine for delayed payment of duties or provision of bond do so.

The person obligated to pay duty for inward or outward articles shall do so prior to release of the articles.

Article 61 Where during the period specified for the person obligated to pay Customs duties for import or export goods there are obvious indications that the person is transferring or concealing the dutiable goods and other property, the Customs may order the obligatory duty payer to provide a bond. Where the duty payer cannot provide a bond for duty payment, the Customs may, upon approval of the director of the Customs office directly under the General Customs Administration or the authorized director of a subordinate Customs office subordinate to and authorized by the former, take the following protective measures for collection of the duties:

- (1) to notify in writing the bank where the obligatory duty payer has opened an account or other financial institution to suspend payment of the amount of the deposits equal to the duties payable; and
- (2) to detain the goods or other property of the duty payer equal to the value of the duties payable.

As soon as the obligatory duty payer pays the duties within the specified time limit, the Customs shall repeal the protective measures for collection of the duties. If, at the expiration of the time limit, the duty payer fails to pay the duties, the Customs may, upon approval of the director of the Customs office directly under the General Customs Administration or the director of a Customs office subordinate to and authorized by the former, notify in writing the bank where the duty

payer has opened an account or other financial institution to deduct the amount of the duties due from the deposits the payment of which is suspended or, in accordance with law, sell off the detained goods or other property to offset the duties with the proceeds.

If the protective measures for collection of duties adopted by the Customs are inappropriate, or if the Customs fails to repeal such measures when the obligatory duty payer has paid the duties within the time limit, so that the lawful rights and interests of the duty payer suffer losses, the Customs shall bear the liability to pay compensation in accordance with law.

Article 62 Where the Customs finds that the duties are short-levied or not levied on a consignment of import or export goods or on an inward or outward article after its release, it shall collect the money payable from the obligatory duty payer within one year of the previous duty payment or the release of the item. If the short-levied or non-levied duties are attributable to the duty payer's violation of the Customs regulations, the Customs may collect the unpaid amount from him within three years.

Article 63 Where the duties are over-levied, the Customs, upon discovery, shall refund the money without delay. The obligatory duty payer may ask the Customs for refunding within one year from the date the duties are paid.

Article 64 Where the obligatory duty payer is involved in a dispute over duty payment with the Customs, he shall pay the duties and may apply for administrative reconsideration in accordance with law; if he is not satisfied with the decision made after the reconsideration, he may file a suit in a People's Court in accordance with law.

Article 65 The regulations for collection of Customs duties shall be applicable to the collection of taxes by the Customs on behalf of other government departments for import goods.

## Chapter VI Customs Bond

Article 66 If, before the classification of the goods is determined, their value is assessed, effective declaration documents are presented or other Customs formalities are completed, the consignee or consigner asks the Customs to release the goods, the Customs shall release the goods after the consignee or consigner provides a bond which is commensurate with the legal obligation he is required to perform according to law. A bond may be dispensed with where it is so provided for by laws or administrative regulations.

Where it is otherwise stipulated in laws and administrative regulations with respect to the bond for the obligation of completing Customs formalities, the provisions there shall prevail.

Where the importation or exportation of goods or articles is restricted by State regulations or the license required cannot be presented, or in other cases where bond is not allowed according to the laws and administrative regulations, the Customs may not release the goods or articles against any bond.

Article 67 Any legal person, other organization or citizen that is capable of fulfilling a Customs bond may become a bondsman except where it is otherwise provided for by law.

Article 68 A bondsman may offer bond with the following property and rights:

- (1) Renminbi (RMB) and free convertible currencies;
- (2) draft, cashier's check, check, debenture and certificate of deposit;
- (3) letter of guarantee issued by a bank or a non-banking financial institution; and
- (4) other property and rights approved by the Customs in accordance with law.

Article 69 The bondsman shall, within the bond period, bear the responsibility for bond. Where the bondsman performs his responsibility, the bonded person shall not be freed from his obligation to complete Customs formalities.

Article 70 Administrative measures for Customs bond shall be formulated by the State Council.

## Chapter VII Supervision over Law-Enforcement

Article 71 In performing its duties, the Customs shall abide by laws, safeguard national interests, enforce the law strictly in accordance with the statutory functions and powers and the legal procedures, and accept supervision.

Article 72 Customs officers shall enforce the law impartially, be honest and self-disciplined, devote themselves to their duties, render services with civility, and they may not commit any of the following acts:

- (1) to shield or connive at smuggling or collude with others in smuggling;
- (2) to illegally restrict others' personal freedom, search the body, domiciles or places of others, inspect or detain inward or outward means of transport, goods or articles;
- (3) to seek private ends for themselves or others by taking advantage of their powers;
- (4) to extort or accept bribes;
- (5) to divulge State, commercial or Customs secrets;
- (6) to abuse their powers, intentionally create difficulties in or procrastinate the control and inspection process;
- (7) to purchase, divide up among themselves or appropriate confiscated smuggled goods or articles;
- (8) to participate in, or do so in disguised form, profit-making business;

- (9) to perform their duties in violation of legal procedures or beyond the limits of their powers; or
- (10) other acts against the law.

Article 73 The Customs shall, according to the need for performing its duties in compliance with laws, strengthen its contingent, so that the Customs officers are armed with good political and professional qualifications.

The professional staff of the Customs shall have legal and relevant professional knowledge and meet the job requirements set by the Customs for professional posts.

When recruiting staff, the Customs shall, in accordance with State regulations, hold examinations openly, make strict assessment and employ those who pass the examinations.

The Customs shall make plans for conducting training among its officers in respect of political and ideological education, the legal system and the work of the Customs. The Customs officers shall be trained and assessed regularly; those who are proved disqualified by assessment shall discontinue performing their duties at their posts.

Article 74 The General Customs Administration shall implement a system under which the directors of the Customs are rotated regularly.

The directors of the Customs at lower levels shall report to the directors of the Customs at the next higher level on their work, giving a truthful statement of their performance of duties. The General Customs Administration shall make regular assessment of the directors of the Customs offices directly under it, and the latter shall do the same with regard to the directors of the Customs offices subordinate to them.

Article 75 The administrative enforcement of laws by the Customs and its officers shall be subject to supervision by the supervisory authority in accordance with law; when conducting investigations, the anti-smuggling police shall be subject to supervision by the People's Procuratorates.

Article 76 The auditing authority shall, in accordance with law, exercise supervision by auditing the revenues and expenditures of the Customs, and it has the power to investigate, by auditing, the special items which are related to the revenues and expenditures of the State and are handled by the Customs.

Article 77 The Customs at a higher level shall exercise supervision over the administration of law by the Customs at the lower level. Where the Customs at the higher level considers the settlement or decision made by the Customs at a lower level inappropriate, it may modify or replace it.

Article 78 The Customs shall, in accordance with the provisions of this Law and other relevant laws and administrative regulations, establish and improve an internal system for supervision, exercising supervision over and inspection of its staff members as to how they implement the laws and administrative regulations and observe discipline.

Article 79 The responsibilities and powers of the key posts for document examination, inspection, release of goods, checking and investigation conducted inside the Customs shall be clearly defined, and be separate from each other and mutually restricting.

Article 80 Any entity and individual shall have the right to accuse and report the violations of laws and rules of discipline committed by the Customs or its staff members. Where the authority that receives such accusations and reports has the power to handle them, it shall, in accordance with law and the division of responsibilities, conduct investigation and handle them without delay. The authority that receives the accusations and reports and the authority that is responsible for investigating and handling them shall keep the accusers and reporters secret.

Article 81 When investigating and handling a case of violation of law, the staff members of the Customs shall withdraw in any of the following situations:

- (1) where he is a party or a close relative of a party to the case;
- (2) where he or his close relative has an interest in the case; or
- (3) where he has other relationships with a party to the case, which may affect the impartial handling of the case.

## Chapter VIII Legal Responsibilities

Article 82 Anyone who, in violation of this Law and other relevant laws or administrative regulations, commits any of the following acts by evading Customs control, duties payable, or State control over the goods or articles the importation or exportation of which is prohibited or restricted is committing smuggling:

- (1) to transport, carry or mail into or out of the territory goods or articles the importation or exportation of which is prohibited or restricted by the State or goods or articles for which duties are payable according to law;
- (2) to sell within the territory, without Customs permission and without payment of the payable duties or without producing relevant licenses, bonded goods, goods listed for specific duty reduction or exemption and other goods, articles or inward foreign means of transport under Customs control; or
- (3) to commit other acts by evading Customs control that constitute smuggling.

Anyone who commits any of the acts listed in the preceding paragraph, which is not serious enough to constitute a crime, the Customs shall confiscate the smuggled goods, articles and illegal gains and it may also impose a fine on the person; the Customs shall confiscate the goods or articles that are specially or repeatedly used for shielding smuggling and the means of transport that are specially or repeatedly used for smuggling, and it shall order that the equipment specially made for concealing smuggled goods or articles be demolished or confiscated them.



Anyone who commits any of the acts listed in the first paragraph, which constitutes a crime, shall be investigated for criminal responsibility in accordance with law.

Article 83 Any of the following acts shall be dealt with as smuggling and punished in accordance with the provisions of Article 82 of this Law:

(1) to purchase directly and illegally from smugglers the goods or articles imported by smuggling; or

(2) for any vessels or persons aboard on inland seas, territorial waters, boundary rivers or boundary lakes to transport, purchase or sell goods or articles the importation or exportation of which is prohibited or restricted by the State or, without lawful documents, transport, purchase or sell goods for which duties should be paid in accordance with law.

Article 84 Anyone who counterfeits, adulterates, purchases or sells Customs documents, conspires with smugglers and provides them with loans, funds, account numbers, invoices, certificates or Customs documents or conspires with smugglers and provides them with transport, storage, mailing or other conveniences, which constitutes a crime, shall be investigated for criminal responsibility in accordance with law; where the case is not serious enough to constitute a crime, the Customs shall confiscate the illegal gains and it may also impose a fine on the person.

Article 85 Any individual who carries or mails articles for personal use into or out of the territory in a quantity exceeding the reasonable limit fails to declare them to the Customs in accordance with law shall be ordered to pay the duties and a fine may also be imposed on him.

Article 86 A fine may be imposed for any of the following acts committed in violation of the provisions of this Law and the illegal gains, if any, shall be confiscated:

(1) for a means of transport to enter or leave the territory at a place without a Customs office;

(2) to fail to inform the Customs of the arrival or departure time of an inward or outward means of transport, the place where it will stay or any change of such a place;

(3) to fail to declare truthfully to the Customs the import or export goods or articles, or the transit, transshipment or through goods;

(4) to fail to accept, in accordance with relevant regulations, the checking and inspection by the Customs of the means of transport, goods or articles entering or leaving the territory;

(5) for an inward or outward means of transport to load or unload inward or outward goods or articles or let passengers embark or disembark without Customs approval;

(6) for an inward or outward means of transport staying at a place with a Customs office to leave without Customs approval;

(7) for an inward or outward means of transport en route from one place with a Customs office to another to move out of the territory or to a place in the territory where there is no Customs office, without completing the Customs formalities and obtaining Customs approval;

(8) for an inward or outward means of transport to engage concurrently in or change to services within the territory without Customs approval;

(9) for an inward or outward vessel or aircraft which, due to force majeure, anchors or lands at a place without a Customs office, or jettisons or discharges goods or articles in the territory to fail, without justifiable reasons, to report to the Customs nearby;

(10) without Customs permission to open, take, deliver, forward, transpose, repack, mortgage, hypothecate, hold as a lien, transfer the ownership of or replace the labels of the goods under Customs control, or use them for other purposes, or dispose of them by other means;

(11) without permission to open or break the seals affixed by the Customs;

(12) for an entity or individual engaged in such businesses as transportation, storage and processing of goods subjected to Customs control to fail to produce justifiable reasons for the loss of related goods or the untruthfulness of the related records; or

(13) to commit other acts in violation of the regulations for Customs control.

Article 87 Where an enterprise permitted by the Customs to engage in related businesses violates the relevant provisions of this Law, the Customs shall order it to rectify and may give it a disciplinary warning, suspend it from engaging in the related businesses or revoke its registration.

Article 88 Any entity or individual that, without Customs registration or the qualifications for such declaration, engages in declaration at the Customs shall be banned by the Customs, the illegal gains shall be confiscated, and a fine may also be imposed on the entity or individual.

Article 89 Where a Customs clearing enterprise or individual that illegally declares to the Customs on behalf of others or conducts declaration beyond the scope of its or his businesses, the Customs may order it or him to rectify, impose a fine on it or him or suspend it or him from the business; if the circumstances are serious, the Customs may revoke its declaration registration or his qualifications for declaration.

Article 90 Where the consignee for import goods or the consigner for export goods, the Customs clearing enterprise or individual bribes the staff members of the Customs, the Customs shall revoke its declaration registration or his qualifications and it may also impose a fine. Where a crime is constituted, the enterprise or individual shall be investigated for criminal responsibility in accordance with law and shall not be allowed to re-register with the Customs as a clearing enterprise or to be granted qualification certificate for Customs declaration.

Article 91 Where an entity that, in violation of the provisions of this Law, imports or exports goods, which constitutes an infringement on the intellectual property rights protected by laws and administrative regulations of the People's Republic of China, the Customs shall confiscate the said goods and impose a fine on it; if the violation constitutes a crime, the entity shall be investigated for criminal responsibility in accordance with law.

Article 92 No goods, articles or means of transport detained by the Customs in accordance with law may be disposed of before the People's Court makes a judgement or the Customs makes a

penalty decision. However, hazardous goods or such goods or articles not suitable for storage for a long time as fresh and live ones, perishable ones and ones easy to lose effectiveness and goods, articles or means of transport which the owner applies to sell off in advance may, upon approval by the director of the Customs directly under the General Customs Administration or the director of a Customs office subordinate to and authorized by the former, be sold off in advance in accordance with law, and the Customs shall keep the proceeds thus obtained and inform the owner of the fact.

The smuggled goods or articles, the illegal proceeds obtained therefrom and the means of transport and the equipment specially made for smuggling - which the People's Court decides by judgement to confiscate or the Customs decides to confiscate - shall all be disposed of by the Customs in accordance with law, the money thus obtained and the fine imposed by decision of the Customs shall all be turned over to the State Treasury.

Article 93 Where the party concerned refuses to carry out the Customs' penalty decision and fails to apply for a reconsideration of the case or file a suit in a People's Court within the specified time limit, the Customs that makes the penalty decision may substitute the party's bond for the penalty or, in accordance with law, substitute the detained goods, articles or means of transport of the party at the current price for the penalty, or apply to the People's Court for compulsory execution of the decision.

Article 94 If the Customs causes damage to any inward or outward goods or articles while inspecting them, it shall compensate for the actual loss from such damage.

Article 95 If the Customs, in violation of law, detains goods, articles or means of transport, thus causing losses to the lawful rights and interests of a party, it shall bear the liability to pay compensation in accordance with law.

Article 96 Any staff member of the Customs who commits one of the acts listed in Article 72 of this Law shall be given administrative sanctions in accordance with law; the illegal gains, if any, shall be confiscated; if the case constitutes a crime, he shall be investigated for criminal responsibility in accordance with law.

Article 97 If the revenues and expenses of a Customs office are found to be in violation of laws or administrative regulations, the matter shall be dealt with by the audit authority and the relevant departments in accordance with laws and administrative regulations. The persons who are directly in charge and the other persons who are directly responsible shall be given administrative sanctions in accordance with law; if a crime is constituted, criminal responsibility shall be investigated in accordance with law.

Article 98 Any authority that fails to keep the accusers and reporters secret in accordance with the provisions of this Law, the persons who are directly in charge and the other persons who are directly responsible shall be given administrative sanctions in accordance with law by the department to which they belong or by relevant departments.

Article 99 Where Customs staff members, when investigating and handling cases of violations, fail to withdraw in accordance with the provisions of this Law, the persons who are directly in charge

and the other persons who are directly responsible shall be given administrative sanctions in accordance with law.

## Chapter IX Supplementary Provisions

Article 100 The terms used in this law are defined as follows:

The term "Customs office directly under the General Customs Administration" refers to the Customs which is directly under the leadership of the General Customs Administration and responsible for the administration of the Customs work in a certain region. The term "the Customs office subordinate" refers to the Customs which is under the leadership of a Customs office directly under the General Customs Administration and is responsible for dealing with specific Customs formalities.

The term "inward and outward means of transport" refers to the various vessels, vehicles, aircraft and beasts of burden, which enter or leave the territory carrying persons, goods or articles.

The term "transit, transshipment and through goods" refers to goods which come from a place outside the territory and pass through the territory en route to a place outside the territory. Among them, "transit goods" are those which pass through the territory by land, "transshipment goods" are those which do not pass through the territory by land but are loaded on a different means of transport at a place with a Customs office, and "through goods" are those which are carried into and out of the territory by the same vessel or aircraft.

The term "goods under Customs control" refers to import and export goods, transit goods, transshipment goods and through goods listed in Article 23 of this law, specific goods granted with duty reduction or exemption, temporarily imported and exported goods, bonded goods and other inward and outward goods for which Customs formalities have not been completed.

The term "bonded goods" refers to goods which, with the approval of the Customs, enter the territory without going through the formalities to pay duties, and are reshipped out of the territory after being stored, processed or assembled in the territory.

The term "Customs surveillance zone" refers to seaports, railway and highway stations, airports, border passes and international postal exchanges (stations for exchanging postal items) where there are Customs offices, other places where Customs control is conducted and places where there are no Customs offices but that are specified, upon approval of the State Council, as spots of entry into and exit of the territory.

Article 101 Measures for control over the means of transport, goods and articles that go between specific areas, such as the special economic zones, and other areas within the territory shall be formulated by the State Council.

Article 102 This Law shall go into effect as of July 1, 1987. The Provisional Customs Law of the People's Republic of China promulgated by the Central People's Government on April 18, 1951 is annulled simultaneously.

## **Extradition Law of the People's Republic of China**

Adopted at the 19th Meeting of the Standing Committee of the Ninth National People's Congress on December 28, 2000 and promulgated by Order No. 42 of the President of the People's Republic of China on December 28, 2000

### Contents

#### Chapter I General Provisions

#### Chapter II Request Made to the People's Republic of China for Extradition

##### Section 1 Conditions for Extradition

##### Section 2 Submission of the Request for Extradition

##### Section 3 Examination of the Request for Extradition

##### Section 4 Compulsory Measures for Extradition

##### Section 5 Execution of Extradition

##### Section 6 Postponed and Temporary Extradition

##### Section 7 Transit for Extradition

#### Chapter III Request Made to Foreign States for Extradition

#### Chapter IV Supplementary Provisions

#### Chapter I General Provisions

Article 1 This Law is enacted for the purpose of ensuring normal extradition, strengthening international cooperation in punishing crimes, protecting the lawful rights and interests of individuals and organizations, safeguarding national interests and maintaining public order.

Article 2 This Law is applicable to extradition conducted between the People's Republic of China and foreign states.

Article 3 The People's Republic of China cooperates with foreign states in extradition on the basis of equality and reciprocity.

No cooperation in extradition may impair the sovereignty, security or public interests of the People's Republic of China.

Article 4 The People's Republic of China and foreign states shall communicate with each other through diplomatic channels for extradition. The Ministry of Foreign Affairs of the People's Republic of China is designated as the communicating authority for extradition.

Where in an extradition treaty there are special provisions to govern the communicating authority, the provisions there shall prevail.

Article 5 In handling cases of extradition, compulsory measures including detention, arrest and residential surveillance may, depending on the circumstances, be taken against the person sought.

Article 6 The terms used in this Law are defined as follows:

- (1) "the person sought" refers to the person for whom a request for grant of extradition is made by a requesting state;
- (2) "the person extradited" refers to the person extradited from the requested state to the requesting state;
- (3) "extradition treaty" refers to a treaty on extradition, which is concluded between the People's Republic of China and a foreign state or to which both the People's Republic of China and a foreign state are parties, or any other treaty which contains provisions in respect of extradition.

## Chapter II Request Made to the People's Republic of China for Extradition

### Section 1 Conditions for Extradition

Article 7 Request for extradition made by a foreign state to the People's Republic of China may be granted only when it meets the following conditions:

- (1) the conduct indicated in the request for extradition constitutes an offence according to the laws of both the People's Republic of China and the Requesting State; and
- (2) where the request for extradition is made for the purpose of instituting criminal proceedings, the offence indicated in the request for extradition is, under the laws of both the People's Republic of China and the Requesting State, punishable by a fixed term of imprisonment for one year or more or by any other heavier criminal penalty; where the request for extradition is made for the purpose of executing a criminal penalty, the period of sentence that remains to be served by the person sought is at least six months at the time when the request is made.

If the request for extradition concerns miscellaneous offences which conform to the provisions of Subparagraph (1) of the preceding paragraph, as long as one of the offences conforms to the provisions of Subparagraph (2) of the preceding paragraph, extradition may be granted for all of those offences.

Article 8 The request for extradition made by a foreign state to the People's Republic of China shall be rejected if:

- (1) the person sought is a national of the People's Republic of China under the laws of the People's Republic of China;
- (2) at the time the request is received, the judicial organ of the People's Republic of China has rendered an effective judgement or terminated the criminal proceedings in respect of the offence indicated in the request for extradition;
- (3) the request for extradition is made for a political offence, or the People's Republic of China has granted asylum to the person sought;
- (4) the person sought is one against whom penal proceedings instituted or punishment may be executed for reasons of that person's race, religion, nationality, sex, political opinion or personal status, or that person may, for any of those reasons, be subjected to unfair treatment in judicial proceedings;
- (5) the offence indicated in the request for extradition is a purely military offence under the laws of the People's Republic of China or the laws of the Requesting State;
- (6) the person sought is, under the laws of the People's Republic of China or the laws of the Requesting State, immune from criminal responsibility because, at the time the request is received, the limitation period for prosecuting the offence expires or the person is pardoned, or for other reasons;
- (7) the person sought has been or will probably be subjected to torture or other cruel, inhuman or humiliating treatment or punishment in the Requesting State;
- (8) the request for extradition is made by the Requesting State on the basis of a judgement rendered by default, unless the Requesting State undertakes that the person sought has the opportunity to have the case retried under conditions of his presence.

Article 9 The request for extradition made by a foreign state to the People's Republic of China may be rejected if:

- (1) the People's Republic of China has criminal jurisprudence over the offence indicated in the request and criminal proceedings are being instituted against the person or preparations are being made for such proceedings; or
- (2) extradition is incompatible with humanitarian considerations in view of the age, health or other conditions of the person sought.

## Section 2 Submission of the Request for Extradition

Article 10 The request for extradition made by the Requesting State shall be submitted to the Ministry of Foreign Affairs of the People's Republic of China.

Article 11 The Requesting State shall present a letter of request for extradition which shall specify:

- (1) the name of the requesting authority;



(2) the name, sex, age, nationality, category and number of identification documents, occupation, characteristics of appearance, domicile and residence of the person sought and other information that may help to identify and search for the person;

(3) facts of the offence, including the time, place, conduct and outcome of the offence; and

(4) legal provisions on adjudgement, measurement of penalty and prescription for prosecution.

Article 12 A letter of request for extradition submitted by the Requesting State shall be accompanied by:

(1) where extradition is requested for the purpose of instituting criminal proceedings, a copy of the warrant of arrest or other document with the same effect; where extradition is requested for the purpose of executing criminal punishment, a copy of legally effective written judgment or verdict, and where part of punishment has already been executed, a statement to such an effect; and

(2) the necessary evidence of the offence or evidentiary material.

The Requesting State shall provide the photographs and fingerprints of the person sought and other material in its control which may help to identify that person.

Article 13 The letter of request for extradition and other relevant documents submitted by the Requesting State in accordance with the provisions of this Section shall be officially signed or sealed by the competent authority of the Requesting State and be accompanied by translations in Chinese or other languages agreed to by the Ministry of Foreign Affairs of the People's Republic of China.

Article 14 The Requesting State shall make the following assurances when requesting extradition:

(1) no criminal responsibility shall be investigated against the person in respect of the offences committed before his surrender except for which extradition is granted, nor shall that person be re-extradited to a third state, unless consented by the People's Republic of China, or unless that person has not left the Requesting State within 30 days from the date the proceedings in respect of the offence for which extradition is requested are terminated, or the person completes his sentence or is released before the sentence expires, or after leaving the country the person has returned of his own free will; and

(2) where after submitting the request for extradition, the Requesting State withdraws or waives it, or it is a mistake for the Requesting State to submit such a request, the Requesting State shall bear the responsibility for the harm thus done to the person.

Article 15 Where there is no extradition treaty to go by, the Requesting State shall make a reciprocity assurance.

### Section 3 Examination of the Request for Extradition

Article 16 Upon receiving the request for extradition from the Requesting State, the Ministry of Foreign Affairs shall examine whether the letter of request for extradition and the accompanying

documents and material conform to the provisions of Section 2 in Chapter II of this Law and the provisions of extradition treaties.

The Higher People's Court designated by the Supreme People's Court shall examine whether the request for extradition made by the Requesting State conforms to the provisions of this Law and of extradition treaties regarding conditions for extradition and render a decision on it. The decision made by the Higher People's Court is subject to review by the Supreme People's Court.

Article 17 Where two or more states request extradition of the same person for the same or different conducts, the order of priority of the request for extradition shall be determined upon considering the factors such as the time when those requests for extradition are received by the People's Republic of China and the fact whether there are extradition treaties between the People's Republic of China and the Requesting States to go by.

Article 18 Where the Ministry of Foreign Affairs, after examination, believes that the request for extradition submitted by the Requesting State does not conform to the provisions of Section 2 in Chapter II of this Law or the provisions of extradition treaties, it may ask the Requesting State to furnish supplementary material within 30 days. The time limit may be extended for 15 days at the request of the Requesting State.

If the Requesting State fails to provide supplementary material within the time limit mentioned above, the Ministry of Foreign Affairs shall terminate the extradition case. The Requesting State may make a fresh request for extradition of the person for the same offence.

Article 19 Where the Ministry of Foreign Affairs, after examination, believes that the request for extradition submitted by the Requesting State conforms to the provisions of Section 2 in Chapter II of this Law and the provisions of extradition treaties, it shall transmit the letter of request for extradition and the accompanying documents and material to the Supreme People's Court and the Supreme People's Procuratorate.

Article 20 Where the person sought is detained for extradition before a foreign state makes a formal request for extradition, the Supreme People's Court shall, without delay, transmit the letter of request for extradition and the accompanying documents and material it has received to the Higher People's Court concerned for examination.

Where the said person is not detained for extradition before a foreign state makes a formal request for extradition, the Supreme People's Court shall, after receiving the letter of request for extradition and the accompanying documents and material, notify the Ministry of Public Security to search for the person. Once finding the person, the public security organ shall, in light of the circumstances, subject that person to detention or residential surveillance for extradition and the Ministry of Public Security shall notify the Supreme People's Court of the fact. Upon receiving the notification of the Ministry of Public Security, the Supreme People's Court shall, without delay, transmit the letter of request for extradition and the accompanying documents and material to the Higher People's Court concerned for examination.

Where, after searching, the public security organ is certain that the person sought is not in the territory of the People's Republic of China or it cannot find the person, the Ministry of Public

Security shall, without delay, notify the Supreme People's Court of the fact. The latter shall, immediately after receiving the notification of the Ministry of Public Security, notify the Ministry of Foreign Affairs of the results of the search, and the Ministry of Foreign Affairs shall notify the Requesting State of the same.

Article 21 Where the Supreme People's Procuratorate, after examination, believes that the offence indicated in the request for extradition or other offences committed by the person sought are subject to prosecution by a Chinese Judicial organ, although criminal proceedings have not yet been instituted, it shall, within one month from the date the letter of request for extradition and the accompanying documents and material are received, notify the Supreme People's Court the Ministry of Foreign Affairs respectively of its opinions to institute criminal proceedings.

Article 22 The Higher People's Court shall, in accordance with the relevant provisions of this Law and of extradition treaties regarding conditions for extradition, examine the request for extradition made by the Requesting State, which shall be conducted by a collegial panel composed of three judges.

Article 23 When examining an extradition case, the Higher People's Court shall hear the pleadings of the person sought and the opinions of the Chinese lawyers entrusted by the person. The Higher People's Court shall, within 10 days from the date it receives the letter of request for extradition transmitted by the Supreme People's Court, serve a copy of the letter to the person. The person shall submit his opinions within 30 days from the date he receives the copy.

Article 24 After examination, the Higher Peoples' Court shall:

(1) where the request for extradition made by the Requesting State is regarded as being in conformity with the provisions of this Law and of extradition treaties, render a decision that the request meets the conditions for extradition. Where the person whose extradition requested falls under the category for postponed extradition according to Article 42 of this Law, it shall be so specified in the decision; or

(2) where the request for extradition made by the Requesting State is regarded not as being in conformity with the provisions of this Law and of extradition treaties, render a decision that no extradition shall be granted.

Upon request by the Requesting State, the Higher People's Court may, on condition that other proceedings being conducted in the territory of the People's Republic of China are not hindered and the lawful rights and interests of any third party in the territory of the People's Republic of China are not impaired, decided to transfer the property related to the case, while rendering the decision that the request meets he conditions for extradition.

Article 25 After making the decision that the request meets the conditions for extradition or the decision that no extradition shall be granted, the Higher People's Court shall have it read to the person sought and, within seven days from the date it makes the decision, submit the decision and the relevant material to the Supreme People's Court for review.

Where the person sought refuses to accept the decision made by the Higher People's Court that the request meets the conditions for extradition, he and the Chinese lawyers entrusted by him may, within 10 days from the date the People's Court has the decision read to the person, submit their opinions to the Supreme People's Court.

Article 26 The Supreme People's Court shall review the decision made by the Higher People's Court and shall do the following respectively:

- (1) where it believes that the decision made by the Higher People's Court conforms to the provisions of this Law and of extradition treaties, it shall approve it; and
- (2) where it believes that the decision made by the Higher People's Court does not conform to the provisions of this Law and of extradition treaties, it may quash it and send the case back to the People's Court which has originally reviewed it for fresh review, or modify the decision directly.

Article 27 In the course of examination, the People's Court may, when necessary, request through the Ministry of Foreign Affairs that the Requesting State provide supplementary material within 30 days.

Article 28 After making the decision of approval or modification, the Supreme People's Court shall, within seven days from the date it makes the decision, transmit the letter of decision to the Ministry of Foreign Affairs and, at the same time, serve it on the person sought.

After approving the decision or making the decision that no extradition shall be granted, the Supreme People's Court shall immediately notify the public security organ to terminate the compulsory measures against the person sought.

Article 29 After receiving the decision made by the Supreme People's Court that no extradition shall be granted, the Ministry of Foreign Affairs shall, without delay, notify the Requesting State of the same.

Upon receiving the decision made by the Supreme People's Court that the request meets the conditions for extradition, the Ministry of Foreign Affairs shall submit the decision to the State Council for which to decide whether to grant extradition.

Where the State Council decides not to grant extradition, the Ministry of Foreign Affairs shall, without delay, notify the Requesting State of the same. The People's Court shall immediately notify the public security organ to terminate the compulsory measures against the person sought.

#### Section 4 Compulsory Measures for Extradition

Article 30 Where before making a formal request for extradition, a foreign state applies, under urgent circumstances, for keeping in custody the person sought, the public security organ may detain the said person for extradition upon request by the foreign state.

The request mentioned in the preceding paragraph shall be submitted through diplomatic channels or to the Ministry of Public Security in written form and shall contain the following:

- (1) the contents provided for in Articles 11 and 14 of this Law;

(2) statement of availability of the material provided for in Subparagraph (1), Article 12 of this Law; and

(3) statement that a formal request for extradition is to be made soon.

If the request is submitted through diplomatic channels, the Ministry of Foreign Affairs shall, without delay, transmit it to the Ministry of Public Security. If the request is submitted to the Ministry of Public Security, the Ministry of Public Security shall impart to the Ministry of Foreign Affairs information about the request.

Article 31 When the public security organ, in accordance with the provisions of Article 30 of this Law, takes measures to detain the person for extradition, as requested, if the request is submitted to the Ministry of Public Security, the Ministry of Public Security shall, without delay, notify the Requesting State of the fact; if the request is submitted through diplomatic channels, the Ministry of Public Security shall notify the Ministry of Foreign Affairs of the fact and the latter shall, without delay, notify the Requesting State of the same. When doing the notification through the above-mentioned channels, the time limit for submitting a formal request for extradition shall be informed at the same time if the person has been detained for extradition as requested.

If, within 30 days after the public security organ takes the measure of detention for extradition, the Ministry of Foreign Affairs receives no formal request for extradition from the foreign state, the public security organ shall terminate the detention for extradition. At the request of the foreign state, the time limit may be extended for 15 days.

Where the detention for extradition is terminated in accordance with the provisions in the second paragraph of this Article, the Requesting State may make a formal request for extradition of that person for the same offence afterwards.

Article 32 After receiving the letter of request for extradition and the accompanying documents and material, the Higher People's Court shall, without delay, make a decision to arrest the person for extradition, where normal extradition may be impeded if such a measure is not taken. Where the measure of arrest for extradition is not taken against the person sought, a decision for residential surveillance shall be made without delay.

Article 33 Detention for extradition, arrest for extradition and residential surveillance for extradition shall be executed by the public security organs.

Article 34 The organ that takes a compulsory measure for extradition shall, within 24 hours after measure is taken, interrogate the person against whom the compulsory measure for extradition is taken.

The person against whom a compulsory measure for extradition is taken may, beginning from the date the compulsory measure is taken, employ Chinese lawyers for legal assistance. When executing the compulsory measure for extradition, the public security organ shall inform that person of the above-mentioned right he is entitled to.

Article 35 Where the person sought, who should otherwise be arrested for extradition, is seriously ill or is a woman who is pregnant or is breast-feeding her own baby, residential surveillance may be taken against him or her.

Article 36 After making the decision to grant the extradition, the State Council shall, without delay, notify the Supreme People's Court of the decision. If the person sought is not arrested for extradition, the People's Court shall immediately make a decision to arrest that person for extradition.

Article 37 If the foreign state withdraws or waives the request for extradition, the compulsory measure taken against the person sought shall be terminated immediately.

## Section 5 Execution of Extradition

Article 38 Extradition shall be executed by the public security organs. Where the State Council decides to grant extradition, the Ministry of Foreign Affairs shall, without delay, notify the Ministry of Public Security of the decision, and notify the Requesting State to consult with the Ministry of Public Security for arrangements with regard to the time, place, manners for surrender of the person sought and other matters related to execution of the extradition.

Article 39 Where extradition is to be executed in accordance with the provisions of Article 38 of this Law, the public security organ shall, in accordance with the decision of the People's Court, transfer the property related to the case to the Requesting State.

When extradition cannot be executed for reasons of death or escape of the person sought or for other reasons, the property mentioned above may, all the same, be transferred to the Requesting State.

Article 40 Where, within 15 days from the date agreed on for surrender, the Requesting State does not take over the person sought, it shall be regarded as waiving the request for extradition of its own accord. The public security organ shall immediately release the person, and the Ministry of Foreign Affairs may refuse to accept any fresh request by the Requesting State for extradition of the person for the same offence.

Where, for reasons beyond its control, the Requesting State fails to take over the person sought within the above-mentioned time limit, it may request an extension of the time limit for not more than 30 days, or seek to negotiate for fresh arrangements for surrender in accordance with the provisions of Article 38 of this Law.

Article 41 Where the person under extradition escapes back to the People's Republic of China before criminal proceedings are terminated or his sentence is served in the Requesting State, that person may be re-extradited upon a fresh request for extradition made the Requesting State in respect of the same offence and the Requesting State need not submit the documents and material provided for in Section 2 of this Chapter.

## Section 6 Postponed and Temporary Extradition

Article 42 Where the judicial organ of the People's Republic of China is, for other reasons, conducting criminal proceedings or executing criminal punishment against the person sought, the State Council may decide to postpone the extradition while approving it.

Article 43 If postponed extradition may seriously impede the criminal proceedings in the Requesting State, the person sought may be extradited temporarily upon the request of the Requesting State on condition that the criminal proceedings being conducted in the territory of the People's Republic of China are not hindered and the Requesting State undertakes to send back that person unconditionally and immediately after concluding the relevant proceedings.

The decision on temporary extradition shall be made by the State Council after obtaining consent of the Supreme People's Court or the Supreme People's Procuratorate, as the case may be.

### Section 7 Transit for Extradition

Article 44 Where extradition between foreign states involves transit through the territory of the People's Republic of China, the foreign states shall, in accordance with the relevant provisions of Article 4 and Section 2 of this Chapter of this Law, make a request for such transit.

The preceding paragraph is not applicable where air transport is used for transit and no landing in the territory of the People's Republic of China is scheduled. In the event of an unscheduled landing, a request for transit shall be submitted in accordance with the provisions of the preceding paragraph.

Article 45 The Ministry of Foreign Affairs shall, in accordance with the relevant provisions of this Law, examine the request for transit made by a foreign state, and make a decision on whether to permit it or not.

The decision to permit transit or to refuse transit shall be notified to the Requesting State by the Ministry of Foreign Affairs through the same channels as the ones through which the request is received.

After making the decision to permit transit, the Ministry of Foreign Affairs shall, without delay, notify the Ministry of Public Security of the same. The Ministry of Public Security shall decide on such matters as the time, place and manners for the transit.

Article 46 The public security organ in the place of transit shall supervise or assist in the execution of transit for extradition.

The public security organ may provide a temporary place for custody upon the request of the Requesting State.

## Chapter III Request Made to Foreign States for Extradition

Article 47 When requesting a foreign state to grant extradition or transit for extradition, the adjudicative organ, procuratorate organ, public security organ, state security organ or prison administration organ responsible for handling the case concerned in a province, autonomous region and municipality directly under the Central Government shall submit its written opinions accompanied by relevant documents and material with certified correct translation respectively to the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice. After the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice have, respectively in conjunction with the Ministry of Foreign Affairs, reviewed the opinions and approved to make the request, the request shall be submitted to the foreign state through the Ministry of Foreign Affairs.

Article 48 Under urgent circumstances, before a formal request for extradition is made, the request to take compulsory measures against the person concerned may be submitted to the foreign state through diplomatic channels or other channels consented by the Requested State.

Article 49 The instruments, documents and material required for request for extradition, for transit for extradition, or for taking compulsory measures shall be submitted in accordance with the provisions of extradition treaties, or where there are no such treaties or no such provisions in such treaties to go by, the provisions of Sections 2, 4 and 7 of this Chapter may be applied *mutatis mutandis*, or where the Requested State raises specific requirements, those requirements may be complied with on condition that the basic principles contained in the laws of the People's Republic of China are not violated.

Article 50 Where the Requested State grants extradition with strings attached, the Ministry of Foreign Affairs may, on behalf of the Government of the People's Republic of China, make assurance on condition that the sovereignty, national interests and public interests of the People's Republic of China are not impaired. The assurance with regard to restriction on prosecution shall be subject to decision by the Supreme People's Procuratorate; the assurance with regard to measurement of penalty shall be subject to decision by the Supreme People's Court.

In investigating criminal responsibility of the person extradited, the judicial organ shall be bound by the assurance made.

Article 51 The public security organ shall be responsible for taking over the person whose extradition is granted by the foreign state as well as the property related to the case.

Where the request for extradition is made by other organs, the public security organ shall, after taking over the person extradited and the property related to the case, transfer them to the said organs without delay, or take over the said person and related property in conjunction with the organs concerned.

#### Chapter IV Supplementary Provisions



Article 52 Where, in accordance with the provisions of this Law, whether to grant extradition is subject to decision by the State Council, the State Council may, when necessary, authorize relevant departments to make the decision.

Article 53 Where the person sought suffers any harm because the Requesting State, after submitting the request for extradition, withdraws or waives the request, or makes a mistake in requesting for extradition and the person presents a claim for compensation, such claim shall be presented to the Requesting State.

Article 54 The expenses arising from the handling of a case of extradition shall be defrayed in accordance with extradition treaties or agreements which both the Requesting State and the Requested State have acceded to or signed.

Article 55 This Law shall go into effect as of the date of promulgation.

## **Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures**

Adopted at the First Session of the Seventh National People's Congress on April 13, 1988 and promulgated by Order No.4 of the President of the People's Republic of China on April 13, 1988; amended according to the Decision on Revision of the Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures adopted at the 18th Meeting of the Standing Committee of the Ninth National People's Congress on October 31, 2000

Article 1 This Law is formulated to expand economic cooperation and technological exchange with foreign countries and to promote the joint establishment, on the principles of equality and mutual benefit, by foreign enterprises and other economic organizations or individuals (hereinafter referred to as the foreign party) and Chinese enterprises or other economic organizations (hereinafter referred to as the Chinese party) of Chinese-foreign contractual joint ventures ( hereinafter referred to as contractual joint ventures ) within the territory of the People's Republic of China.

Article 2 In establishing a contractual joint venture, the Chinese and foreign parties shall, in accordance with the provisions of this Law, prescribe in their contractual joint venture contract such matters as the investment or conditions for cooperation, the distribution of earnings or products, the sharing of risks and losses, the manners of operation and management and the ownership of the property at the time of the termination of the contractual joint venture.

A contractual joint venture which meets the conditions for being considered a legal person under Chinese law shall acquire the status of a Chinese legal person in accordance with law.

Article 3 The State shall, according to law, protect the lawful rights and interests of the contractual joint ventures and of the Chinese and foreign parties.

A contractual joint venture shall abide by Chinese laws and regulations and may not injure the public interests of China.

The relevant State authority shall exercise supervision over the contractual joint ventures according to law.

Article 4 The State shall encourage the establishment of productive contractual joint ventures that are export-oriented or technologically advanced.

Article 5 For the purpose of applying for the establishment of a contractual joint venture, such documents as the agreement, the contract and the articles of association signed by the Chinese and foreign parties shall be submitted for examination and approval to the department in charge of foreign economic relations and trade under the State Council or to the department or local government authorized by the State Council (hereinafter referred to as the examination and approval authority). The examination and approval authority shall, within 45 days from the date of receiving the application, decide whether or not to grant approval.

Article 6 When the application for the establishment of a contractual joint venture is approved, the parties shall, within 30 days from the date of receiving the certificate of approval, apply to the administrative department for industry and commerce for registration in order to obtain a business license. The date of issue of the business license of contractual joint venture shall be the date of its establishment.

A contractual joint venture shall, within 30 days of its establishment, carry out tax registration with the tax authorities.

Article 7 If the Chinese and foreign parties, during the period of operation of their contractual joint venture, agree through consultation to make major modifications to the contractual joint venture contract, they shall report to the examination and approval authority for approval; if the modifications include items involving statutory industry and commerce registration or tax registration, they shall register the modifications with the administrative department for industry and commerce and with the tax authorities.

Article 8 The investment or conditions for cooperation contributed by the Chinese and foreign parties may be provided in cash or in kind, or may include the right to the use of land, industrial property rights, non-patent technology or other property rights.

Article 9 The Chinese and foreign parties shall, in accordance with the provisions of the laws and regulations and the agreements in the contractual joint venture contract, duly fulfil their obligations of contributing full investment and providing the conditions for cooperation. In case of failure to do so within the prescribed time, the administrative department for industry and commerce shall set another time limit for the fulfillment of such obligations; if such obligations are still not fulfilled by the new time limit, the matter shall be handled by the examination and approval authority and the administrative department for industry and commerce according to relevant State regulations.

The investments or conditions for cooperation provided by the Chinese and foreign parties shall be verified by an accountant registered in China or the relevant authorities, who shall provide a certificate after verification.

Article 10 If a Chinese or foreign party wishes to make an assignment of all or part of its rights and obligations prescribed in the contractual joint venture contract, it shall be subject to consent of the other party or parties and report to the examination and approval authority for approval.

Article 11 A contractual joint venture shall conduct its operational and managerial activities in accordance with the approved contract and articles of association for the contractual joint venture. The right of a contractual joint venture to make its own operational and managerial decisions shall not be free from any interference.

Article 12 A contractual joint venture shall establish a board of directors or a joint managerial institution which shall, according to the contract or the articles of association for the contractual joint venture, decide on the major issues concerning the venture. If the Chinese or foreign party assumes the chairmanship of the board of directors or the directorship of the joint managerial institution, the other party shall assume the vice-chairmanship of the board or the deputy

directorship of the joint managerial institution. The board of directors or the joint managerial institution may decide on the appointment or employment of a general manager, who shall take charge of the daily operation and management of the contractual joint venture. The general manager shall be accountable to the board of directors or the joint managerial institution.

If a contractual joint venture, after its establishment, chooses to entrust a third party with its operation and management, it shall be subject to the unanimous consent of the board of directors or the joint managerial institution, report to the examination and approval authority for approval, and register the change with the administrative department for industry and commerce.

Article 13 The employment, dismissal, remuneration, welfare benefits, occupational protection, labour insurance, etc. of the staff members and workers of a contractual joint venture shall be specified in contracts concluded in accordance with law.

Article 14 The staff and workers of a contractual joint venture shall, in accordance with law, establish their trade union organization to carry out trade union activities and protect their lawful rights and interests.

A contractual joint venture shall provide the necessary conditions for the venture's trade union to carry out its activities.

Article 15 A contractual joint venture shall establish its account books within the territory of China, file its accounting statements according to relevant regulations and accept supervision by the financial and tax authorities.

If a contractual joint venture, in violation of the provisions prescribed in the preceding paragraph, does not establish its account books within the territory of China, the financial and tax authorities may impose a fine on it, and the administrative department for industry and commerce may order it to suspend its business operation or may revoke its business license.

Article 16 A contractual joint venture shall, by presenting its business license, open a foreign exchange account with a bank or any other financial institution which is permitted by the exchange control authorities of the State to conduct transactions in foreign exchange.

A contractual joint venture shall handle its foreign exchange transactions in accordance with the State regulations on foreign exchange control.

Article 17 A contractual joint venture may obtain loans from financial institutions within the territory of China and may also obtain loans outside the territory of China.

Loans to be used by the Chinese and foreign parties as investment or conditions for cooperation, and their guarantees shall be provided by each party on its own.

Article 18 The various kinds of insurance coverage of a contractual joint venture shall be furnished by insurance institutions within the territory of China

Article 19 A contractual joint venture may, within its scope of operation approved, import materials it needs and export products it produces. A contractual joint venture may, in adherence to the principles of fairness and rationality, purchase on both the Chinese and the world market the raw and semi-processed materials, fuels and other materials it needs within the approved scope of operation.

Article 20 A contractual joint venture shall, in accordance with State regulations on tax, pay taxes and may enjoy the preferential treatment of tax reduction or exemption.

Article 21 The Chinese and foreign parties shall share earnings or products, undertake risks and losses in accordance with the agreements prescribed in the contractual joint venture contract.

If, upon the expiration of the period of a venture's operation, all the fixed assets of the contractual joint venture, as agreed upon by the Chinese and foreign parties in the contractual joint venture contract, are to belong to the Chinese party, the Chinese and foreign parties may prescribe in the contractual joint venture contract the ways for the foreign party to recover its investment ahead of time during the period of the venture's operation. If the foreign party, as agreed upon in the contractual joint venture contract, is to recover its investment prior to the payment of income tax, it shall apply to the financial and tax authorities, which shall examine and approve the application in accordance with State regulations concerning taxes.

If, according to the provisions of the preceding paragraph, the foreign party is to recover its investment ahead of time during the period of the venture's operation, the Chinese and foreign parties shall, as stipulated by the relevant laws and agreed in the contractual joint venture contract, be liable for the debts of the venture.

Article 22 After the foreign party has fulfilled its obligations under the law and the contractual joint venture contract, the profits it receives as its share, its other legitimate income and the funds it receives as its share upon the termination of the venture, may be remitted abroad according to law.

The wages, salaries or other legitimate income earned by the foreign staff and workers of contractual joint ventures, after the payment of the individual income tax according to law, may be remitted abroad.

Article 23 Upon the expiration or termination in advance of the term of a contractual joint venture, its assets, claims and debts shall be liquidated according to legal procedures. The Chinese and foreign parties shall, in accordance with the agreement specified in the contractual joint venture contract, determine the ownership of the venture's property.

A contractual joint venture shall, upon the expiration or termination in advance of its term, cancel its registration with the administrative department for industry and commerce and the tax authorities.

Article 24 The period of operation of a contractual joint venture shall be determined through consultation by the Chinese and foreign parties and shall be clearly specified in the contractual joint venture contract. If the Chinese and foreign parties agree to extend the period of operation, they shall apply to the examination and approval authority 180 days prior to the expiration of the

venture's term. The examination and approval authority shall decide whether or not to grant approval within 30 days from the date of receiving the application.

Article 25 Any dispute between the Chinese and foreign parties arising from the execution of the contract or the articles of association for a contractual joint venture shall be settled through consultation or mediation. In case of a dispute which the Chinese or foreign parties is unwilling to settle through consultation or mediation, or of a dispute which they have failed to settle through consultation or mediation, the Chinese and foreign parties may submit it to a Chinese arbitration agency or any other arbitration agency for arbitration in accordance with the arbitration clause in the contractual joint venture contract or a written agreement on arbitration concluded afterwards.

The Chinese or foreign party may bring a suit in a Chinese court, if no arbitration clause is provided in the contractual joint venture contract and if no written agreement is concluded afterwards.

Article 26 The detailed rules for the implementation of this Law shall be formulated by the department in charge of foreign economic relations and trade under the State Council and reported to the State Council for approval before implementation.

Article 27 This Law shall go into effect as of the date of its promulgation.

# **Law of the People's Republic of China on Import and Export Commodity Inspection**

Adopted at the 6th Meeting of the Standing Committee of the Seventh National People's Congress and promulgated by Order No. 14 of the President of the People's Republic of China on February 21, 1989, amended in accordance with the Decision on Amending the Law of the People's Republic of China on Import and Export Commodity Inspection adopted at the 27th Meeting of the Standing Committee of the Ninth National People's Congress on April 28, 2002.

## Contents

### Chapter I General Provisions

### Chapter II Inspection of Import Commodities

### Chapter III Inspection of Export Commodities

### Chapter IV Supervision

### Chapter V Legal Responsibility

### Chapter VI Supplementary Provisions

### Chapter I General Provisions

Article 1 This Law is enacted with a view to improving the inspection of import and export commodities, regulating inspection of import and export commodity, protecting public interests and the legitimate rights and interests of the parties involved in foreign trade, and promoting the smooth development of China's economic and trade relations with other countries.

Article 2 The State Council shall establish an administration for import and export commodity inspection (hereinafter referred to as the State administration for commodity inspection, in short), which shall be in charge of the inspection of import and export commodities throughout the country. The local import and export commodity inspection authorities set up by the State administration for commodity inspection (hereinafter referred to as the commodity inspection authorities, in short) shall be responsible for the inspection of import and export commodities within the regions under their jurisdiction.

Article 3 The commodity inspection authorities and the inspection bodies permitted by the State administration for commodity inspection shall, in accordance with law, perform the inspection of import and export commodities.

Article 4 The import and export commodities shall be inspected in adherence to the principles of protecting human health and safety, animal and plant life and health, and the environment; preventing deceptive practices and preserving security of the State. The State administration for commodity inspection shall compile and readjust the catalogue of import and export commodities subject to compulsory inspection (hereinafter referred to as the Catalogue, in short) and publish it for implementation.

Article 5 The inspection of the import and export commodities which are listed in the Catalogue shall be conducted by the commodity inspection authorities.

No import commodities specified in the preceding paragraph that are not inspected may be said or used; and no commodities specified in the preceding paragraph that fail to pass the inspection may be exported.

Among the import and export commodities specified in the first paragraph of this Article, those that meet the requirements for exemption from inspection, as prescribed by the State, may be exempted from inspection, if the consignee or consignor files an application and the application is approved by the State administration for commodity inspection after examination.

Article 6 By compulsory inspection of import and export commodities is meant the conformity assessment as to whether the import and export commodities included by decision in the Catalogue meet the compulsory requirements of the technical regulations of the State.

The procedures for conformity assessment include: sampling, testing and inspection; evaluation, verification and assurance of conformity; and registration, accreditation and approval as well as their combinations.

Article 7 The import and export commodities which are listed in the Catalogue shall be inspected in accordance with the compulsory requirements of the technical regulations of the State. With regard to those commodities for which compulsory requirements of the technical regulations of the State have not yet been formulated, such requirements shall be formulated in time according to law. Before their formulation, those commodities may be inspected with reference to the relevant foreign standards designated by the State administration for commodity inspection.

Article 8 The inspection bodies permitted by the State administration for commodity inspection may provide inspection and survey services in respect of the import and export commodities as entrusted by parties involved in foreign trade or by foreign inspection bodies.

Article 9 Import and export commodities or items subject to inspection by other inspection bodies, as provided for by laws or administrative rules and regulations, shall be inspected in accordance with the provisions of relevant laws or administrative rules and regulations.

Article 10 The State administration for commodity inspection and the commodity inspection authorities shall, without delay, collect information on the inspection of import and export commodities and make it available to the relevant quarters.

The staff members of the State administration for commodity inspection and the commodity inspection authorities shall have the obligation to keep the commercial secrets of which they



become aware in the course of fulfilling their duties of inspection of import and export commodities.

## Chapter II Inspection of Import Commodities

Article 11 For import commodities which are subject to inspection by the commodity inspection authorities, as provided for by this Law, the consignee or his agent shall apply for inspection to the commodity inspection authorities located at the place he makes Customs declarations. The Customs shall check and release the commodities on the strength of the Documents for Customs Clearance issued by the commodity inspection authorities.

Article 12 For import commodities which are subject to inspection by the commodity inspection authorities, as provided for by this Law, the consignee or his agent shall, in the places and within the time limit specified by the commodity inspection authorities, accept inspection of the import commodities conducted by the commodity inspection authorities. The commodity inspection authorities shall complete the inspection and issue an inspection certificate within the time limit specified uniformly by the State administration for commodity inspection.

Article 13 Where the consignee of the import commodities other than those that are subject to inspection by the commodity inspection authorities, as provided for by this Law, finds that the import commodities do not meet the relevant quality requirements, are damaged or are short on weight or quantity, he shall apply to the commodity inspection authorities for inspection and the issuance of an inspection certificate if such a certificate is necessary for claiming compensation,.

Article 14 For important import commodities and complete sets of equipment in large size, the consignee shall, in accordance with the terms agreed upon in foreign trade contracts, conduct initial inspection or initial supervision over manufacturing or loading in the exporting country before shipment, over which the relevant competent departments shall tighten their supervision. The commodity inspection authorities may, when necessary, dispatch inspection officials to take part in such inspection and supervision.

## Chapter III Inspection of Export Commodities

Article 15 For export commodities which are subject to inspection by the commodity inspection authorities, as provided for by this Law, the consigner or his agent shall, in the places and within the time limit specified by the commodity inspection authorities, apply for inspection to the commodity inspection authorities. The commodity inspection authorities shall complete the inspection and issue an inspection certificate within the time limit specified uniformly by the State administration for commodity inspection.

For the export commodities that are subject to inspection, as provided for by this Law, the Customs shall check and release the commodities on the strength of the Documents for Customs Clearance issued by the commodity inspection authorities.

Article 16 Export commodities which have passed the inspection conducted by the commodity inspection authorities and for which inspection certificates have been issued shall be declared for export within the time limit specified by the commodity inspection authorities. Re-application for inspection is necessary when the specified time limit expires.

Article 17 An enterprise manufacturing packagings for dangerous export commodities shall apply to the commodity inspection authorities for a test of the performance of such packagings. An enterprise producing dangerous export commodities shall apply to the same authorities for a test of the use of packagings. No permission shall be granted for the export of dangerous commodities kept in packagings which have not passed the test.

Article 18 For vessel holds or containers used for carrying perishable foods, the carrier or the exporter using the vessel holds or containers shall apply for inspection before loading. No permission shall be granted for loading and shipment until the vessel holds or containers have passed the inspection.

#### Chapter IV Supervision

Article 19 For the import and export commodities other than those that are subject to inspection by the commodity inspection authorities, as provided by this Law, the commodity inspection authorities may conduct random inspection in accordance with State regulations.

The State administration for commodity inspection may publicize the results of random inspection or notify the relevant departments of the random inspection.

Article 20 For the convenience of foreign trade, the commodity inspection authorities may, in accordance with State regulations, conduct quality supervision and inspection in respect of the export commodities which are listed in the Catalogue, before they leave the factory.

Article 21 The agent going through the formalities of applying for inspection on behalf of the consignee of import commodities or consigner of export commodities shall register with the commodity inspection authorities. When going through the formalities of applying for inspection, the agent shall submit his letter of authorization to the commodity inspection authorities.

Article 22 The State administration for commodity inspection may, in accordance with the relevant regulations of the State and after examining their qualifications, permit the qualified inspection bodies at home and abroad to undertake the inspection and survey of import and export commodities entrusted to them.

Article 23 The State administration for commodity inspection and the commodity inspection authorities shall, in accordance with law, exercise supervision over the inspection and survey of

the import and export commodity conducted by the inspection bodies permitted by the State administration for commodity inspection and may conduct random inspection of the commodities which have been inspected by such bodies.

Article 24 The State administration for commodity inspection shall, in adherence to the unified certification system of the State, have the relevant import and export commodities supervised through certification.

Article 25 The commodity inspection authorities may, on the basis of the agreements signed between the State administration for commodity inspection and the foreign bodies concerned or upon entrustment by the foreign bodies concerned, undertake quality certification of import and export commodities, and permit the use of quality certification marks on the import and export commodities qualified.

Article 26 The commodity inspection authorities shall supervise, through inspection of certificates, over the import and export commodities which are subject to the permit system, as provided for by this Law, examining the certificates and checking whether they conform to the commodities concerned.

Article 27 The commodity inspection authorities may, when necessary, place commodity inspection marks or sealing on the import and export commodities which have passed the inspection.

Article 28 Where an applicant for the inspection of import and export commodities disagrees with the results of inspection presented by the commodity inspection authorities, he may apply for re-inspection to the same authorities, or to those at the next higher level or up to the State administration for commodity inspection. The commodity inspection authorities or the State administration for commodity inspection which accepts the application for re-inspection shall draw a timely conclusion after re-inspection.

Article 29 Where a party is not satisfied with the conclusion drawn after re-inspection by the commodity inspection authorities or the State administration for commodity inspection, or is not satisfied with the decision on punishment made by the commodity inspection authorities, he may, in accordance with law, apply for administrative reconsideration or bring a suit in a People's Court according to law.

Article 30 The State administration for commodity inspection and the commodity inspection authorities shall, in the course of performing their duties, abide by laws, safeguard the interests of the State, execute the laws strictly in pursuant to their statutory functions and powers and the statutory procedures, and accept supervision.

The State administration for commodity inspection and the commodity inspection authorities shall, on the basis the requirements for performing their duties according to law, strengthen the building of their contingents and enable their staff members to possess good political and professional qualifications. The staff members engaged in commodity inspection authorities shall receive professional training and appraisal regularly, and only those who pass the appraisal may be assigned to their duties.

The staff members engaged in commodity inspection shall devote themselves to their duties, offer services with civility and observe professional ethics, and refrain from abusing their powers and seeking personal gain.

Article 31 The State administration for commodity inspection and the commodity inspection authorities shall establish a sound system for internal supervision, and conduct supervision and inspection on the execution of laws by their staff members.

The limits of duties and powers of the key posts for accepting applications for inspection, conducting inspection and issuing certificates to release commodities shall be explicitly defined, so that they are separate from each other and are mutually conditioned.

Article 32 Any unit and individual shall have the right to accuse and inform against the violations of laws and rules of discipline committed by the State administration for commodity inspection, the commodity inspection authorities and their staff members. The departments receiving the accusations and information shall, in accordance with law and the division of duties, investigate and deal with them without delay, and shall keep secret for the accusers and informers.

## Chapter V Legal Responsibility

Article 33 Where a person, in violation of the provisions of this Law, sells or uses the import commodities subject to inspection by the commodity inspection authorities, for the inspection of which he fails to file an application and which have not undergone inspection, or exports the commodities for export subject to inspection by the commodity inspection authorities, for the inspection of which he fails to file an application and which fail to pass the inspection, his unlawful gains derived therefrom shall be confiscated by the commodity inspection authorities and, in addition, be fined not less than five percent but not more than twenty percent of the value of the commodities; and if the violation constitutes a crime, he shall be investigated for criminal responsibility according to law.

Article 34 Where a unit, in violation of the provisions of this Law and without permission by the State administration for commodity inspection, conduct inspection and survey of import and export commodities, the commodity inspection authorities shall order it to desist from the illegal operation; confiscate its unlawful gains derived therefrom and, in addition, impose on it a fine of not less than the amount of, but not more than three times the amount of, the unlawful gains.

Article 35 Where a person imports or exports commodities which are adulterated or mixed with fake commodities, spurious commodities as genuine ones or defective commodities as good ones, or unqualified commodities as qualified ones, the commodity inspection authorities shall order him to desist from importing or exporting commodities, confiscate his unlawful gains derived therefrom and, in addition, impose on him a fine of not less than fifty percent of, but not more than three times the amount of, the value of the commodities; and if the violation constitutes a crime, he shall be investigated for criminal responsibility according to law.

Article 36 Where a person fabricates, adulterates, deals in or steals commodity inspection certificates or documents, seals or stamps, marks, sealing or quality certification marks, he shall be investigated for criminal responsibility according to law; and if the violation is not serious enough for criminal punishment, the commodity inspection authorities shall order him to rectify, confiscate his unlawful gains derived therefrom and, in addition, impose on him a fine of not more than equivalent of commodities value.

Article 37 Where a staff member of the State administration for commodity inspection or the commodity inspection authorities, in violation of the provisions of this Law, divulges the commercial secrets of which he is aware, he shall be given an administrative sanction according to law; his unlawful gains, if any, shall be confiscated; and if the violation constitutes a crime, he shall be prosecuted for criminal responsibility according to law.

Article 38 Where a staff member of the State administration for commodity inspection or the commodity inspection authorities abuses his power, intentionally creates difficulties, engages in malpractices for personal gain, fabricates inspection results or neglects his duty and delays the inspection of commodities and the issuance of certificates, he shall be given an administrative sanction according to law; and if the violation constitutes a crime, he shall be investigated for criminal responsibility according to law.

## Chapter VI Supplementary Provisions

Article 39 The commodity inspection authorities and other inspection bodies that conduct inspection or providing inspection and survey services in accordance with the provisions of this Law shall collect fees according to relevant State regulations.

Article 40 Regulations for the implementation of this Law shall be formulated by the State Council.

Article 41 This Law shall go into effect as of August 1, 1989.

## Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises

Adopted at the Fourth Session of the Seventh National People's Congress and promulgated by Order No. 45 of the President of the People's Republic of China on April 9, 1991

Article 1 Income tax shall be paid in accordance with the provisions of this Law by enterprises with foreign investment within the territory of the People's Republic of China on their income derived from production, business operations and other sources.

Income tax shall be paid in accordance with the provisions of this Law by foreign enterprises on their income derived from production, business operations and other sources within the territory of the People's Republic of China.

Article 2 "Enterprises with foreign investment" referred to in this Law mean Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures and foreign-capital enterprises that are established in China.

"Foreign enterprises" referred to in this Law mean foreign companies, enterprises and other economic organizations which have establishments or places in China and engage in production or business operations, and which, though without establishments or places in China, have income from sources within China.

Article 3 Any enterprise with foreign investment which establishes its head office in China shall pay its income tax on its income derived from sources inside and outside China. Any foreign enterprise shall pay its income tax on its income derived from sources within China.

Article 4 The taxable income of an enterprise with foreign investment and an establishment or a place set up in China to engage in production or business operations by a foreign enterprise, shall be the amount remaining from its gross income in a tax year after the costs, expenses and losses have been deducted.

Article 5 The income tax on enterprises with foreign investment and the income tax which shall be paid by foreign enterprises on the income of their establishments or places set up in China to engage in production or business operations shall be computed on the taxable income at the rate of thirty percent, and local income tax shall be computed on the taxable income at the rate of three percent.

Article 6 The State shall, in accordance with the industrial policies, guide the orientation of foreign investment and encourage the establishment of enterprises with foreign investment which adopt advanced technology and equipment and export all or greater part of their products.

Article 7 The income tax on enterprises with foreign investment established in Special Economic Zones, foreign enterprises which have establishments or places in Special Economic Zones engaged in production or business operations, and on enterprises with foreign investment of a

production nature in Economic and Technological Development Zones, shall be levied at the reduced rate of fifteen percent.

The income tax on enterprises with foreign investment of a production nature established in coastal economic open zones or in the old urban districts of cities where the Special Economic Zones or the Economic and Technological Development Zones are located, shall be levied at the reduced rate of twenty-four percent.

The income tax on enterprises with foreign investment in coastal economic open zones, in the old urban districts of cities where the Special Economic Zones or the Economic and Technological Development Zones are located or in other regions defined by the State Council, within the scope of energy, communications, harbour, wharf or other projects encouraged by the State, may be levied at the reduced rate of fifteen percent. The specific measures shall be drawn up by the State Council.

Article 8 Any enterprise with foreign investment of a production nature scheduled to operate for a period of not less than ten years shall, from the year beginning to make profit, be exempted from income tax in the first and second years and allowed a fifty percent reduction in the third to fifth years. However, the exemption from or reduction of income tax on enterprises with foreign investment engaged in the exploitation of resources such as petroleum, natural gas, rare metals, and precious metals shall be regulated separately by the State Council. Enterprises with foreign investment which have actually operated for a period of less than ten years shall repay the amount of income tax exempted or reduced already.

The relevant regulations, promulgated by the State Council before the entry into force of this Law, which provide preferential treatment of exemption from or reduction of income tax on enterprises engaged in energy, communications, harbour, wharf and other major projects of a production nature for a period longer than that specified in the preceding paragraph, or which provide preferential treatment of exemption from or reduction of income tax on enterprises engaged in major projects of a non-production nature, shall remain applicable after this Law enters into force.

Any enterprise with foreign investment which is engaged in agriculture, forestry or animal husbandry and any other enterprise with foreign investment which is established in remote underdeveloped areas may, upon approval by the competent department for tax affairs under the State Council of an application filed by the enterprise, be allowed a fifteen to thirty percent reduction of the amount of income tax payable for a period of another ten years following the expiration of the period for tax exemption or reduction as provided for in the preceding two paragraphs.

After this Law enters into force, any modification to the provisions of the preceding three paragraphs of this Article on the exemption from or reduction of income tax on enterprises shall be submitted by the State Council to the Standing Committee of the National People's Congress for decision.

Article 9 The exemption from or reduction of local income tax on any enterprise with foreign investment which operates in an industry or undertakes a project encouraged by the State shall, in

accordance with the actual situation, be at the discretion of the people's government of the relevant province, autonomous region or municipality directly under the Central Government.

Article 10 Any foreign investor of an enterprise with foreign investment which reinvests its share of profit obtained from the enterprise directly into that enterprise by increasing its registered capital, or uses the profit as capital investment to establish other enterprises with foreign investment to operate for a period of not less than five years shall, upon approval by the tax authorities of an application filed by the investor, be refunded forty percent of the income tax already paid on the reinvested amount. Where regulations of the State Council provide otherwise in respect of preferential treatment, such provisions shall apply. If the investor withdraws its reinvestment before the expiration of a period of five years, it shall repay the refunded tax.

Article 11 Losses incurred in a tax year by any enterprise with foreign investment and by an establishment or a place set up in China by a foreign enterprise to engage in production or business operations may be made up by the income of the following tax year. Should the income of the following tax year be insufficient to make up for the said losses, the balance may be made up by its income of the further subsequent year, and so on, over a period not exceeding five years.

Article 12 Any enterprise with foreign investment shall be allowed, when filing a consolidated income tax return, to deduct from the amount of tax payable the foreign income tax already paid abroad in respect of the income derived from sources outside China. The deductible amount shall, however, not exceed the amount of income tax otherwise payable under this Law in respect of the income derived from sources outside China.

Article 13 The payment or receipt of charges or fees in business transactions between an enterprise with foreign investment or an establishment or a place set up in China by a foreign enterprise to engage in production or business operations, and its associated enterprises, shall be made in the same manner as the payment or receipt of charges or fees in business transactions between independent enterprises. Where the payment or receipt of charges or fees is not made in the same manner as in business transactions between independent enterprises and results in a reduction of the taxable income, the tax authorities shall have the right to make reasonable adjustment.

Article 14 Where an enterprise with foreign investment or an establishment or a place set up in China by a foreign enterprise to engage in production or business operations is established, moves to a new site, merges with another enterprise, breaks up, winds up or makes a change in any of the main entries of registration, it shall present the relevant documents to and go through tax registration or a change or cancellation in registration with the local tax authorities after the relevant event is registered, or a change or cancellation in registration is made with the administrative agency for industry and commerce.

Article 15 Income tax on enterprises and local income tax shall be computed on an annual basis and paid in advance in quarterly instalments. Such payments shall be made within fifteen days from the end of each quarter and the final settlement shall be made within five months from the end of each tax year. Any excess payment shall be refunded and any deficiency shall be repaid.

Article 16 Any enterprise with foreign investment and any establishment or place set up in China by a foreign enterprise to engage in production or business operations shall file its quarterly



provisional income tax return in respect of advance payments with the local tax authorities within the period for each advance payment of tax, and it shall file an annual income tax return together with the final accounting statements within four months from the end of the tax year.

Article 17 Any enterprise with foreign investment and any establishment or place set up in China by a foreign enterprise to engage in production or business operations shall report its financial and accounting systems to the local tax authorities for reference. All accounting records must be complete and accurate, with legitimate vouchers as the basis for entries.

If the financial and accounting bases adopted by an enterprise with foreign investment and an establishment or a place set up in China by a foreign enterprise to engage in production or business operations contradict the relevant regulations on tax of the State Council, tax payment shall be computed in accordance with the relevant regulations on tax of the State Council.

Article 18 When any enterprise with foreign investment goes into liquidation, and if the balance of its net assets or the balance of its remaining property after deduction of the enterprise's undistributed profit, various funds and liquidation expenses exceeds the enterprise's paid-in capital, the excess portion shall be liquidation income on which income tax shall be paid in accordance with the provisions of this Law.

Article 19 Any foreign enterprise which has no establishment or place in China but derives profit, interest, rental, royalty and other income from sources in China, or though it has an establishment or a place in China, the said income is not effectively connected with such establishment or place, shall pay an income tax of twenty percent on such income.

For the payment of income tax in accordance with the provisions of the preceding paragraph, the income beneficiary shall be the taxpayer and the payer shall be the withholding agent. The tax shall be withheld from the amount of each payment by the payer. The withholding agent shall, within five days, turn the amount of taxes withheld on each payment over to the State Treasury and submit a withholding income tax return to the local tax authorities.

Income tax shall be exempted or reduced on the following income:

- (1) the profit derived by a foreign investor from an enterprise with foreign investment shall be exempted from income tax;
- (2) income from interest on loans made to the Chinese government or Chinese State banks by international financial organizations shall be exempted from income tax;
- (3) income from interest on loans made at a preferential interest rate to Chinese State banks by foreign banks shall be exempted from income tax; and
- (4) income tax of the royalty received for the supply of technical know-how in scientific research, exploitation of energy resources, development of the communications industries, agricultural, forestry and animal husbandry production, and the development of important technologies may, upon approval by the competent department for tax affairs under the State Council, be levied at the reduced rate of ten percent. Where the technology supplied is advanced or the terms are preferential, exemption from income tax may be allowed.

Apart from the aforesaid provisions of this Article, if preferential treatment in respect of reduction of or exemption from income tax on profit, interest, rental, royalty and other income is required, it shall be regulated by the State Council.

Article 20 The tax authorities shall have the right to inspect the financial, accounting and tax affairs of enterprises with foreign investment and establishments or places set up in China by foreign enterprises to engage in production or business operations, and have the right to inspect tax withholding of the withholding agent and its payment of the withheld tax into the State Treasury. The entities and the withholding agents being so inspected must report the facts and provide relevant information. They may not refuse to report or conceal any facts.

When making an inspection, the tax officials shall produce their identity documents and be responsible for confidentiality.

Article 21 Income tax payable according to this Law shall be computed in terms of Renminbi (RMB). Income in foreign currency shall be converted into Renminbi according to the exchange rate quoted by the State exchange control authorities for purposes of tax payment.

Article 22 If any taxpayer fails to pay tax within the prescribed time limit, or if the withholding agent fails to turn over the tax withheld within the prescribed time limit, the tax authorities shall, in addition to setting a new time limit for tax payment, impose a surcharge for overdue payment, equal to 0.2 percent of the overdue tax for each day in arrears, starting from the first day the payment becomes overdue.

Article 23 The tax authorities shall set a new time limit for registration or submission of documents and may impose a fine of five thousand yuan or less on any taxpayer or withholding agent which fails to go through tax registration or make a change or cancellation in registration with the tax authorities within the prescribed time limit, or fails to submit income tax return, final accounting statements or withholding income tax return to the tax authorities within the prescribed time limit, or fails to report its financial and accounting systems to the tax authorities for reference.

Where the tax authorities have set a new time limit for registration or submission of documents, they shall impose a fine of ten thousand yuan or less on the taxpayer or withholding agent which again fails to meet the time limit for going through registration or making a change in registration with the tax authorities, or for submitting income tax return, final accounting statements or withholding income tax return to the tax authorities. Where the circumstances are serious, the legal representative and the person directly responsible shall be investigated for criminal responsibility by applying *mutatis mutandis* the provisions of Article 121 of the Criminal Law.

Article 24 Where the withholding agent fails to fulfil its obligation to withhold tax as provided in this Law, and does not withhold or withholds an amount less than that should have been withheld, the tax authorities shall set a time limit for the payment of the amount of tax that should have been withheld, and may impose a fine up to but not exceeding one hundred percent of the amount of tax that should have been withheld.

Where the withholding agent fails to turn the tax withheld over to the State Treasury within the prescribed time limit, the tax authorities shall set a time limit for turning over the taxes and may

impose a fine of five thousand yuan or less on the withholding agent; if the withholding agent fails to meet the time limit again, the tax authorities shall pursue the taxes according to law and may impose a fine of ten thousand yuan or less on the withholding agent. If the circumstances are serious, the legal representative and the person directly responsible shall be investigated for criminal responsibility by applying *mutatis mutandis* the provisions of Article 121 of the Criminal Law.

Article 25 Where any person evades tax by deception or concealment or fails to pay tax within the time limit prescribed by this Law and, after the tax authorities pursued the payment of tax, fails again to pay it within the prescribed time limit, the tax authorities shall, in addition to recovering the tax which should have been paid, impose a fine up to but not exceeding five hundred percent of the amount of tax which should have been paid. Where the circumstances are serious, the legal representative and the person directly responsible shall be investigated for criminal responsibility in accordance with the provisions of Article 121 of the Criminal Law.

Article 26 Any enterprise with foreign investment, foreign enterprise or withholding agent, in case of a dispute with the tax authorities on payment of tax, must pay tax according to the relevant regulations first. Thereafter, the taxpayer or withholding agent may, within sixty days from the date of receipt of the tax payment certificate issued by the tax authorities, apply to the tax authorities at the next higher level for reconsideration. The higher tax authorities shall make a decision within sixty days after receipt of the application for reconsideration. If the taxpayer or withholding agent is not satisfied with the decision, it may institute legal proceedings in the people's court within fifteen days from the date of receipt of the notification on decision made after reconsideration.

If the party concerned is not satisfied with the decision on punishment by the tax authorities, it may, within fifteen days from the date of receipt of the notification on punishment, apply for reconsideration to the tax authorities at the next higher level than that which made the decision on punishment. Where the party is not satisfied with the decision made after reconsideration, it may institute legal proceedings in the people's court within fifteen days from the date of receipt of the decision made after reconsideration. The party concerned may, however, directly institute legal proceedings in the people's court within fifteen days from the date of receipt of the notification on punishment. If the party concerned neither applies for reconsideration to the higher tax authorities, nor institutes legal proceedings in the people's court within the time limit, nor complies with the decision on punishment, the tax authorities which made the decision on punishment may apply to the people's court for compulsory execution.

Article 27 Where any enterprise with foreign investment which was established before the promulgation of this Law would, in accordance with the provisions of this Law, otherwise be subject to higher tax rates or enjoy less preferential treatment of tax exemption or reduction than before the entry into force of this Law, in respect to such enterprise, within its approved period of operation, the law and relevant regulations of the State Council in effect before the entry into force of this Law shall apply. If any such enterprise has no approved period of operation, the law and relevant regulations of the State Council in effect before the entry into force of this Law shall apply within the period prescribed by the State Council. Specific measures shall be drawn up by the State Council.

Article 28 Where the provisions of a tax agreement concluded between the government of the People's Republic of China and a foreign government are different from the provisions of this Law, the provisions of the agreement shall prevail.

Article 29 Rules for implementation shall be formulated by the State Council in accordance with this Law.

Article 30 This Law shall enter into force on July 1, 1991. The Income Tax Law of the People's Republic of China for Chinese-Foreign Equity Joint Ventures and the Income Tax Law of the People's Republic of China for Foreign Enterprises shall be annulled as of the same date.

## **Foreign Trade Law of the People's Republic of China**

Adopted at the 7th Meeting of the Standing Committee of the Eighth National People's Congress on May 12, 1994, revised at the 8th Meeting of the Standing Committee of the Tenth National People's Congress and promulgated by Order No. 15 of the President of the People's Republic of China on April 6, 2004

### Contents

Chapter I General Provisions

Chapter II Foreign Trade Dealers

Chapter III Import and Export of Goods and Technologies

Chapter IV International Trade in Services

Chapter V Protection of Trade-Related Aspects of Intellectual Property Rights

Chapter VI Foreign Trade Order

Chapter VII Foreign Trade Investigation

Chapter VIII Foreign Trade Remedies

Chapter IX Promotion of Foreign Trade

Chapter X Legal Responsibility

Chapter XI Supplementary Provisions

### Chapter I General Provisions

Article 1 This Law is enacted with a view to opening wider to the outside world, developing foreign trade, maintaining foreign trade order, protecting the legitimate rights and interests of foreign trade dealers and promoting the sound development of the socialist market economy.

Article 2 This Law is applicable to foreign trade and the protection of foreign-trade-related aspects of intellectual property rights.

For purposes of this Law, foreign trade refers to the import and export of goods and technologies, and international service trade.

Article 3 The department for foreign trade under the State Council is in charge of foreign trade throughout the country pursuant to this Law.

Article 4 The State applies a unified system of foreign trade, encourages the development of foreign trade and preserves a fair and free foreign trade order.

Article 5 The People's Republic of China, on the principle of equality and mutual benefit, promotes and develops trade relations with other countries and regions, concludes or accedes to such regional economic and trade agreements as tariff alliances agreement and free trade zone agreement, and joins regional economic organizations.

Article 6 In the field of foreign trade, the People's Republic of China, in accordance with the international treaties and agreements it has signed or acceded to, grants the other signatories or acceding parties most-favored-nation treatment or national treatment, or on the principle of mutual benefit and reciprocity, grants the other party most-favored-nation treatment or national treatment, etc.

Article 7 In the event that any country or region adopts prohibitive, restrictive or other similar measures that are discriminatory in nature against the People's Republic of China in trade, the People's Republic of China may, in light of the actual conditions, take countermeasures against the country or region accordingly.

## Chapter II Foreign Trade Dealers

Article 8 For purposes of this Law, foreign trade dealers refer to the legal persons, other organizations or individuals that have gone through the formalities of industrial, commercial or other registration in accordance with law and engage in foreign trade activities in compliance with the provisions of this Law and relevant laws and administrative regulations.

Article 9 A foreign trade dealer who intends to engage in the import and export of goods or technologies shall register with the department for foreign trade under the State Council or the body it entrusts with the registration, unless otherwise prescribed by laws, administrative regulations or by the said department. The specific measures for registration shall be formulated by the department.

Where a foreign trade dealer fails to register as required by regulations, the Customs shall not process the procedures of declaration, inspection and release for the import or export of goods.

Article 10 The units and individuals engaged in international trade in services shall observe the provisions of this Law, and of the relevant laws and administrative regulations.

The units engaged in contracted construction of foreign projects or service cooperation with other countries shall have the necessary eligibility or qualification. The specific measures in this regard shall be formulated by the State Council.

Article 11 The State may put the import and export of certain goods under the control of State-operated trading. Such goods shall only be imported and exported by the authorized enterprises,

expect the import and export of certain quantities of the goods under State- operated trading which the State permits to be operated by unauthorized enterprises.

The catalogues of the goods under the control of State- operated trading and the authorized enterprises shall be determined, adjusted and published by the department for foreign trade under the State Council in conjunction with the relevant department under the State Council.

Where, in violation of the provisions in the first paragraph of this Article, the goods under State-operated trading are imported or exported without authorization, the Customs shall not grant to them clearance.

Article 12 A foreign trade dealer may accept the entrustment by another person to engage in foreign trade as an agent within the scope of its business operations.

Article 13 A foreign trade dealer shall, in accordance with the regulations laid down according to law by the department for foreign trade under the State Council or any other relevant department under the State Council, submit to relevant departments the documents and information related to its foreign trade activities. The latter shall keep the business secrets for the former.

### Chapter III Import and Export of Goods and Technologies

Article 14 The State permits free import and export of goods and technologies, except where otherwise provided for in laws and administrative regulations.

Article 15 The department for foreign trade under the State Council may, based on the need to monitor imports and exports, implement an automatic import and export licensing system for certain goods subject to free import and export and shall publish the catalogue thereof.

Where the consignee or consigner, before going through the Customs declaration formalities, submits an application for automatic licensing for the import or export of the goods under such licensing, the department for foreign trade under the State Council or its authorized department shall grant permission to it . The Customs shall not grant clearance to the goods for which the formalities for automatic licensing are not gone through.

In the case of importing or exporting technologies subject to free import and export, the contracts thereof shall be registered with the department for foreign trade under the State Council or the authority it entrusts with such registration.

Article 16 For the following reasons, the State may restrict or prohibit the import or export of relevant goods and technologies:

(1) for safeguarding State security, and public interests and ethics, it is necessary to restrict or prohibit their import and export;

- (2) for protecting human health or safety, the lives or health of animals and plants, or the environment, it is necessary to restrict or prohibit their import or export;
- (3) for implementing the measures related to the import and export of gold and silver, it is necessary to restrict or prohibit their import or export;
- (4) because of short supply on domestic market or for effective conservation of exhaustible natural resources, it is necessary to restrict or prohibit their export;
- (5) because of the limited market capacity of the importing country or region, it is necessary to restrict their export;
- (6) because of serious chaos in export order, it is necessary to restrict their export;
- (7) for establishing or speeding up the establishment of a particular domestic industry, it is necessary to restrict their import;
- (8) it is necessary to restrict the import of agricultural, animal husbandry and fishery products of any form;
- (9) for maintaining the State's international financial position and the balance of international receipts and payments, it is necessary to restrict their import;
- (10) other goods the import or export of which needs to be restricted or prohibited, as required by laws and administrative regulations; or
- (11) other goods the import or export of which needs to be restricted or prohibited in accordance with the provisions of international treaties or agreements signed or acceded to by the People's Republic of China.

Article 17 With regard to the import and export of goods and technologies related to fissile and fusion material or the substances from which such material is derived, and the imports and exports related to arms, ammunition or other military supplies, the State may adopt any necessary measures to safeguard State security.

In wartime or for the purpose of preserving international peace and security, the State may adopt any necessary measures in respect of the import and export of goods and technologies.

Article 18 The department for foreign trade under the State Council shall, in conjunction with other departments under the State Council and in accordance with the provisions in Articles 16 and 17 of this Law, formulate, adjust and publish the catalogue of goods and technologies that are restricted or prohibited for import or export.

With the approval of the State Council, the department for foreign trade under the State Council or the said department in conjunction with other relevant departments under the State Council may, within the scope specified by the provisions in Article 16 and 17 of this Law, decide on temporary restriction or prohibition on the import or export of specific goods and technologies other than the ones listed in the catalogue mentioned in the preceding paragraph.



Article 19 The State exercises control of the goods subject to import or export restriction through quotas, licensing, etc; with regard to the technologies the import or export of which is restricted, it exercises control through licensing.

The goods and technologies subject to control through quotas or licensing may only be imported or exported upon permission by the department for foreign trade under the State Council, or upon permission jointly by the department and the relevant departments under the State Council, as required by the regulations of the State Council.

The State exercises control of part of the imported goods through tariff-rate quota.

Article 20 Quotas for imported and exported goods and tariff-rate quotas shall be distributed by the department for foreign trade under the State Council or the relevant departments under the State Council within the limits of their respective responsibilities, on the principles of openness, fairness, impartiality and efficiency. The specific measures in this regard shall be formulated by the State Council.

Article 21 The State implements a unified commodity assessment system and, in accordance with the provisions of relevant laws and administrative regulations, carries out certification, inspection and quarantine in respect of imported and exported commodities.

Article 22 The State applies rules of origin to the imported and exported goods. The specific measures in this regard shall be formulated by the State Council.

Article 23 Where the import or export of cultural relics, wild animals and plants and their products are prohibited or restricted by the provisions of other laws or administrative regulations, the provisions of those laws and administrative regulations shall prevail.

#### Chapter IV International Trade in Services

Article 24 In respect of international trade in services, the People's Republic of China shall, in accordance with its commitments made in the international treaties or agreements it has signed or acceded to, grant the other signatories and acceding parties market access and national treatment.

Article 25 The department for foreign trade under the State Council and the relevant departments under the State Council shall, pursuant to the provisions of this Law and the relevant laws and administrative regulations, regulate international trade in services.

Article 26 For any of the following reasons, the State may restrict or prohibit the relevant international trade in services:

(1) restrictions or prohibitions are needed for safeguarding State security and public interests and ethics;

- (2) restrictions or prohibitions are needed for protecting human health or safety, the lives or health of animals and plants, or the environment;
- (3) restrictions are needed for establishing or speeding up the establishment of a particular domestic service industry;
- (4) restrictions are needed for maintaining the balance of receipts and payments of the State in foreign exchanges;
- (5) restrictions or prohibitions are needed for other reasons, as laws and administrative regulations so provide; or
- (6) restrictions or prohibitions are needed for other reasons, as required by the provisions of the international treaties or agreements which China has signed or acceded to.

Article 27 With regard to military-related international trade in services, and international trade in services related to fissile and fusion material or the substances from which such material is derived, the State may adopt any necessary measure to safeguard State security.

In wartime or for the purpose of preserving international peace and security, the State may adopt any necessary measure in respect of international trade in services.

Article 28 The department for foreign trade under the State Council shall, in conjunction with the relevant departments under the State Council and in accordance with the provisions in Articles 26 and 27 of this Law and relevant laws and administrative regulations, formulate, adjust and publish the market access catalogue of international trade in services.

## Chapter V Protection of Trade-Related Aspects of Intellectual Property Rights

Article 29 The State protects trade-related intellectual property rights in accordance with the laws and administrative regulations concerning intellectual property rights.

Where any imported goods infringe upon intellectual property rights and impair foreign trade order, the department for foreign trade under the State Council may take such measures as prohibiting, for a specified period of time, the import of the relevant goods produced or sold by the infringer.

Article 30 Where the owner of a intellectual property right commits any of the acts, such as preventing the licensee from challenging the validity of the intellectual property right in the licensing contract, imposing mandatory package licensing on the licensee or incorporating exclusive grant-back conditions in the licensing contract, which undermines the order of fair competition in foreign trade, the department for foreign trade under the State Council may take any necessary measures to eliminate the harm done.

Article 31 If any country or region fails to grant the legal persons, other organizations or individuals from the People's Republic of China national treatment in respect of protection of intellectual property rights, or cannot adequately and effectively protect the intellectual property rights in respect of the goods, technologies or services from the People's Republic of China, the department for foreign trade under the State Council may, in accordance with the provisions of this Law and the relevant laws and administrative regulations, and the international treaties or agreements which the People's Republic of China has signed or acceded to, take any necessary measures in respect of trade with the country or region in question.

## Chapter VI Foreign Trade Order

Article 32 In foreign trade activities, monopolistic behavior in violation of the provisions of the laws and administrative regulations against monopoly is not allowed.

In foreign trade activities, any monopolistic behavior that jeopardizes fair market competition shall be dealt with in accordance with the provisions of the laws and administrative regulations against monopoly.

In the event that violations as mentioned in the preceding paragraph are committed, which undermine foreign trade order, the department for foreign trade under the State Council may take any necessary measures to eliminate the harm done.

Article 33 In foreign trade activities, no one may engage in unfair competition, such as selling commodities at unreasonably low prices, colluding with another person in a tender, publishing false advertisements and practising commercial bribery.

Any unfair competition in foreign trade activities shall be dealt with in accordance with the provisions of laws and administrative regulations against unfair competition.

In the event that violations as mentioned in the preceding paragraph are committed, which undermine foreign trade order, the department for foreign trade under the State Council may take any measures such as prohibiting the dealer from importing and exporting relevant goods and technologies to eliminate the harm done.

Article 34 In foreign trade activities, none of the following acts may be committed:

- (1) forging or falsifying marks of origin of imported or exported goods; forging, falsifying or dealing in origin certificates of imported or exported goods, import or export licenses, certificates of import or export quotas, or any other import or export certificates;
- (2) obtaining export tax refund by fraudulent means
- (3) smuggling

(4) evading certification, inspection or quarantine which is required by laws and administrative regulations; or

(5) other acts in violation of the provisions of laws and administrative regulations.

Article 35 In foreign trade activities, foreign trade dealers shall act in compliance with the regulations of the State governing foreign exchange control.

Article 36 The department for foreign trade under the State Council may make known to the public any violations of this Law, which undermine foreign trade order.

## Chapter VII Foreign Trade Investigation

Article 37 To maintain foreign trade order, the department for foreign trade under the State Council may, on its own or jointly with the relevant departments under the State Council, investigate the following matters in accordance with the provisions of laws and administrative regulations:

(1) the impact on domestic industries and their competitiveness exerted by the imported and exported goods, imported or exported technologies, and international trade in services;

(2) trade barriers erected by relevant countries or regions;

(3) matters needing to be investigated in order to determine whether such foreign trade remedies as anti-dumping, countervailing duties and safeguards should be taken in accordance with law;

(4) acts circumventing foreign trade remedies;

(5) matters concerning State security and interests in foreign trade;

(6) matters needing to be investigated in order to enforce the provisions in Article 7, the second paragraph of Article 29, Articles 30 and 31, the third paragraph of Article 32 and of Article 33; and

(7) other matters that may have an impact on foreign trade order. Article 38 The initiation of a foreign trade investigation shall be announced by the department for foreign trade under the State Council.

The investigation may be conducted in the form of written questionnaire, hearing, on-the-spot investigation, entrusted investigation, etc.

The department for foreign trade under the State Council shall, based on the findings, submit an investigation report or make a ruling, and make the matter known to the public.

Article 39 The units and individuals concerned shall cooperate and assist in foreign trade investigation.

The department for foreign trade under the State Council and the relevant departments under the State Council and their staff members shall have the obligation to keep confidential the State secrets and business secrets they come to know in the course of foreign trade investigation.

## Chapter VIII Foreign Trade Remedies

Article 40 The State may, based on the findings of foreign trade investigation, take appropriate measures of foreign trade remedies.

Article 41 Where a product from another country or region is dumped into the domestic market at a price lower than its normal value, thus causing or threatening to cause substantive damage to an established domestic industry, or presenting a substantive impediment to the establishment of a domestic industry, the State may take anti-dumping measures to eliminate or mitigate such damage, threat of damage, or impediment.

Article 42 Where a product from another country or region is exported to the market of a third country at a price lower than its normal value, thus causing or threatening to cause substantive damage to an established domestic industry, or presenting a substantive impediment to the establishment of a domestic industry, the department for foreign trade under the State Council may, in response to the application submitted by the domestic industry, conduct consultations with the government of that third country and request it to take appropriate measures.

Article 43 Where an imported product to which specific subsidies of any form are directly or indirectly granted by the exporting country or region causes or threatens to cause substantive damage to an established domestic industry, or presents a substantive impediment to the establishment of a domestic industry, the State may take countervailing measures to eliminate or mitigate such damage or threat of damage, or impediment.

Article 44 Where the substantial increase in the quantities of an imported product causes or threatens to cause serious damage to a domestic producer of like product or a manufacturer of a product directly competitive to the imported one, the State may take the necessary safeguard measures to eliminate or mitigate such damage or threat of damage and, at the same time, provide the industry concerned with the necessary support.

Article 45 Where the increase in the services provided to China by the service supplier of another country or region causes or threatens to cause damage to the domestic industry that provides like or directly competitive services, the State may take the necessary remedies measures to eliminate or mitigate such damage or threat of damage.

Article 46 Where the substantial increase in the quantities of a certain product imported into the domestic market, as a result of the restrictions imposed by a third country on its import, causes or threatens to cause damage to an established domestic industry, or presents a impediment to the establishment of a domestic industry, the State may take the necessary remedies measures to restrict the import of the said product.

Article 47 Where a country or region that has signed or jointly acceded to the economic and trade treaties or agreements with the People's Republic of China violates the provisions of such treaties and agreements and thus causes losses or damage to the interests the People's Republic of China is entitled to under these treaties and agreements, or impedes the achievement of the objectives set in the treaties and agreements, the government of the People's Republic of China has the right to request the government of the country or region concerned to take appropriate remedies measures and may suspend or terminate its performance of relevant obligations in compliance with the relevant treaties and agreements.

Article 48 The department for foreign trade under the State Council shall, in accordance with the provisions of this Law and relevant laws, carry out bilateral or multilateral foreign trade consultations and negotiations and settle disputes over such trade.

Article 49 The department for foreign trade under the State Council and the relevant departments under the State Council shall establish precaution and emergency mechanism for the import and export of goods and of technologies and for the international trade in services to cope with unexpected and unusual situations in foreign trade and safeguard the economic security of the State.

Article 50 The State may take the necessary anti-circumvention measures against the activities that circumvent the foreign trade remedies measures prescribed in this Law.

## Chapter IX Promotion of Foreign Trade

Article 51 The State formulates strategies for the development of foreign trade, and establishes and improves the mechanism for promoting foreign trade.

Article 52 The State, in light of the need for the development of foreign trade, establishes and improves financial institutions in the service of foreign trade and establishes development fund and risk fund for foreign trade.

Article 53 The State develops foreign trade by means of import and export credit, export credit insurance, export tax refund and other means designed to promote foreign trade.

Article 54 The State establishes a system of public information service for foreign trade, providing foreign trade dealers and the public with information services.

Article 55 The State takes measures to encourage foreign trade dealers to exploit international market, and extend foreign trade by a variety of means such as investment abroad, contract for foreign construction projects and overseas labor service cooperation.

Article 56 Foreign trade dealers may establish or join relevant associations or chambers of commerce in accordance with law.

The relevant associations and chambers of commerce shall observe laws and administrative regulations; in compliance with their articles of association, provide their members with foreign-trade-related services in production, marketing, information, training, etc.; play the role of coordination and self-discipline; submit applications for foreign trade remedies measures according to law; safeguard the interests of their members and the industry; report to relevant government departments suggestions made by their members regarding foreign trade; and carry out activities for promotion of foreign trade.

Article 57 The organization for the promotion of international trade in China shall, in accordance with its articles of association, develop external relations, hold exhibitions, provide information and advisory services and carry out other activities to promote foreign trade.

Article 58 The State supports and facilitates small and medium-sized enterprises to develop foreign trade.

Article 59 The State supports and promotes the development of foreign trade in ethnic autonomous regions and economically under-developed areas.

## Chapter X Legal Responsibility

Article 60 The department for foreign trade under the State Council or the relevant department under the State Council may impose a fine of not more than RMB 50,000 yuan on enterprise that, in violation of the provisions in Article 11 of this Law and without authorization, imports or exports the goods subject to control of State-operated trading, and if the circumstances are serious, it may, within three years from the date the administrative penalty decision takes effect, refuse to accept the application submitted by the offender for engaging in the business of import and export of the goods subject to control of State-operated trading, or may withdraw the authorization granted to the offender for the import and export of other goods subject to control of State-operated trading.

Article 61 Any dealer who imports or exports the goods the import and export of which are prohibited or, without authorization, imports or exports the goods import and export of which are restricted shall be dealt with and penalized by the Customs in accordance with the provisions of relevant laws and administrative regulations; if its act constitutes a crime, it shall be investigated for criminal responsibility according to law.

Any dealer who imports or exports the technologies the import and export of which are prohibited or, without authorization, imports or exports the technologies the import and export of which are restricted shall be dealt with and penalized in accordance with the provisions of relevant laws and regulations. Where there are no provisions in laws or administrative regulations to go by, the department for foreign trade under the State Council shall order it to rectify, confiscate its unlawful gains and, in addition, impose a fine of not less than the amount of the unlawful gains but not more than five times that amount. If there are no unlawful gains or such gains are less than

10,000 yuan, a fine of not more than 10,000 yuan but not more than 50,000 yuan shall be imposed. If its act constitutes a crime, it shall be investigated for criminal responsibility according to law.

Within three years from the date the administrative penalty decision or the criminal penalty judgment takes effect, as specified in the preceding two paragraphs, the department for foreign trade under the State Council or the relevant department under the State Council may refuse to accept the application submitted by the offender for import or export quotas or license, or prohibit the offender from engaging in the import or export of relevant goods and technologies for a period of not less than one year but not more than three years.

Article 62 Any dealer that engages in the international trade in services subject to prohibition or, without authorization, engages in the international trade in services subject to restriction shall be penalized in accordance with the provisions of relevant laws and administrative regulations. Where there are no provisions in laws or administrative regulations to go by, the department for foreign trade under the State Council shall order it to rectify, confiscate its unlawful gains and, in addition, impose a fine of not less than the amount of the unlawful gains but not more than five times that amount. If there are no unlawful gains or such gains are less than 10,000 yuan, a fine of not less than 10,000 yuan but not more than 50,000 yuan shall be imposed. If its act constitutes a crime, it shall be investigated for criminal responsibility according to law.

The department for foreign trade under the State Council may prohibit the offender from engaging in the relevant international trade in services for a period of not less than one year but not more than three years from the date the administrative penalty decision or the criminal penalty judgment takes effect, as specified in the preceding paragraph.

Article 63 Any dealer that violates the provisions in Article 34 of this Law shall be penalized in accordance with the provisions of relevant laws and administrative regulations. If its act constitutes a crime, it shall be investigated for criminal responsibility according to law.

The department for foreign trade under the State Council may prohibit the offender from engaging in the relevant foreign trade activities for a period of not less than one year but not more than three years from the date the administrative penalty decision or the criminal penalty judgment takes effect, as specified in the preceding paragraph.

Article 64 During the period of time in which a foreign trade dealer is prohibited, in accordance with the provisions in Articles 61, 62 and 63 of this Law, from engaging in the relevant foreign trade activities, the Customs shall, in accordance with the prohibition decision made by the department for foreign trade under the State Council according to law, refuse to process the procedures of declaration, inspection and release for the relevant goods imported or exported by the said dealer, and the foreign exchange control department or the designated foreign exchange bank shall not handle the exchange settlement or sale for it.

Article 65 Where a staff member of the department responsible for foreign trade administration in accordance with this Law neglects his duties, commits irregularities for personal gain or abuses his power, which constitutes a crime, he shall be investigated for criminal responsibility. If his act is not serious enough to constitute a crime, he shall be given an administrative sanction according to law.



Where a staff member of the department responsible for foreign trade administration in accordance with this Law, taking advantage of his position, extorts money or things of value from another person or illegally accepts another person's money or things of value in order to seek benefits for that person in return, which constitutes a crime, he shall be investigated for criminal responsibility in accordance with law. If his act is not serious enough to constitute a crime, he shall be given an administrative sanction according to law.

Article 66 Any party engaged in foreign trade activities, who is not satisfied with the specific administrative act by the department responsible for foreign trade administration in accordance with this Law, may apply for administrative reconsideration or bring an administrative lawsuit before the people's court in accordance with law.

## Chapter XI Supplementary Provisions

Article 67 Where other laws and administrative regulations provide otherwise in respect of foreign trade administration of military supplies, fissionable or fusionable material or the substances from which such material is derived and the administration of the import and export of cultural products, the provisions there shall prevail.

Article 68 The State adopts flexible measures, and provides preferential treatment and convenience to trade between the border areas of China and those of its neighboring countries as well as trade among border residents. The specific measures in this regard shall be formulated by the State Council.

Article 69 This Law is not applicable to the separate customs territories of the People's Republic of China.

Article 70 This Law shall go into effect as of July 1, 2004.

## **Law of the People's Republic of China on Foreign-Capital Enterprises**

Adopted at the Fourth Session of the Sixth National People's Congress on April 12, 1986 and promulgated by Order No.39 of the President of the People's Republic of China on April 12, 1986; amended according to the Decision on Revision of the Law of the People's Republic of China on Foreign-Capital Enterprises adopted at the 18th Meeting of the Standing Committee of the Ninth National People's Congress on October 31, 2000

Article 1 With a view to expanding economic cooperation and technological exchange with foreign countries and promoting the development of China's national economy, the People's Republic of China permits foreign enterprises, other foreign economic organizations and individuals (hereinafter collectively referred to as "foreign investors") to set up enterprises with foreign capital in China and protects the lawful rights and interests of such enterprises.

Article 2 As mentioned in this Law, "enterprises with foreign capital" refers to those enterprises established in China by foreign investors, exclusively with their own capital, in accordance with relevant Chinese laws. The term does not include branches set up in China by foreign enterprises and other foreign economic organizations.

Article 3 Enterprises with foreign capital shall be established in such a manner as to help the development of China's national economy. The State may encourage the establishment of foreign-capital enterprises that are export-oriented or technologically advanced.

Regulations shall be formulated by the State Council regarding the lines of business which the State forbids enterprises with foreign capital to engage in or on which it places certain restrictions.

Article 4 The investments of a foreign investor in China, the profits it earns and its other lawful rights and interests are protected by Chinese law.

Enterprises with foreign capital shall abide by Chinese laws and regulations and may not engage in any activities detrimental to China's public interests.

Article 5 The State does not nationalize or requisition any enterprise with foreign capital. However, under special circumstances when public interests require, enterprises with foreign capital may be requisitioned through legal procedures and appropriate compensation shall be made.

Article 6 The application to establish an enterprise with foreign capital shall be submitted for examination and approval to the department under the State Council which is in charge of foreign economic relations and trade, or to an institution authorized by the State Council. The authorities in charge of examination and approval shall, within 90 days from the date they receives such application, decide whether or not to grant approval.

Article 7 When the application for the establishment of an enterprise with foreign capital is approved, the foreign investor shall, within 30 days from the date of receiving the certificate of approval, apply to the administrative department for industry and commerce for registration in order to obtain a business licence. The date of issue of the business licence of foreign-capital enterprise shall be the date of its establishment.

Article 8 An enterprise with foreign capital which meets the conditions for being considered a legal person under Chinese law shall acquire the status of a Chinese legal person in accordance with law.

Article 9 An enterprise with foreign capital shall make investments in China within the period approved by the authorities in charge of examination and approval. If it fails to do so, the administrative departments for industry and commerce shall have the power to cancel its business licence.

The administrative department for industry and commerce shall inspect and supervise the investment situation of an enterprise with foreign capital.

Article 10 In the event of separation, merger or other major change, an enterprise with foreign capital shall report the matter to and seek approval from the authorities in charge of examination and approval, and register the change with the administrative department for industry and commerce.

Article 11 Enterprises with foreign capital shall conduct their operation and management in accordance with the approved articles of association and shall be free from any interference.

Article 12 When employing Chinese workers and staff, an enterprise with foreign capital shall conclude contracts with them according to law, in which matters concerning employment, dismissal, remuneration, welfare benefits, occupational protection and labour insurance shall be clearly prescribed.

Article 13 Workers and staff of enterprises with foreign capital may organize trade unions in accordance with law, in order to conduct trade union activities and protect their lawful rights and interests.

The said enterprises shall provide the necessary conditions for the activities of the trade unions in their respective enterprises.

Article 14 An enterprise with foreign capital shall set up account books in China, conduct independent accounting, submit the fiscal reports and statements as required and accept supervision by the financial and tax authorities.

If an enterprise with foreign capital refuses to maintain account books in China, the financial and tax authorities may impose a fine on it, and the administrative department for industry and commerce may order it to suspend operation or may revoke its business licence.

Article 15 A foreign-capital enterprise may, in adherence to the principles of fairness and rationality, purchase on both the Chinese and the world market the raw and semi-processed materials, fuels and other materials it needs within the approved scope of operation.

Article 16 Enterprises with foreign capital shall apply to insurance companies in China for such kinds of insurance coverage as are needed.

Article 17 Enterprises with foreign capital shall pay taxes in accordance with relevant State regulations for tax payment, and may enjoy preferential treatment for reduction of or exemption from taxes.

An enterprise with foreign capital that reinvests its profits in China after paying the income tax may, in accordance with relevant State regulations, apply for refund of a part of the income tax already paid on the reinvested amount.

Article 18 An enterprise with foreign capital shall handle its foreign exchange transactions in accordance with the State regulations on foreign exchange control.

An enterprise with foreign capital shall open an account with the Bank of China or with a bank designated by the State authority exercising foreign exchange control.

Article 19 The foreign investor may remit abroad the profits that are lawfully earned from an enterprise with its investment, as well as other lawful earnings and any funds remaining after the enterprise is liquidated.

Wages, salaries and other legitimate income earned by foreign employees in an enterprise with foreign capital may be remitted abroad after the payment of individual income tax in accordance with law.

Article 20 With respect to the period of operation of an enterprise with foreign capital, the foreign investor shall report to and secure approval from the authorities in charge of examination and approval. For an extension of the period of operation, an application shall be submitted to the said authorities 180 days before the expiration of the period. The authorities in charge of examination and approval shall, within 30 days from the date of receiving such application, decide whether or not to grant the extension.

Article 21 When terminating its operation, an enterprise with foreign capital shall promptly issue a public notice and proceed with liquidation in accordance with legal procedure.

Pending the completion of liquidation, a foreign investor may not dispose of the assets of the enterprise except for the purpose of liquidation.

Article 22 At the termination of operation, the enterprise with foreign capital shall cancel its registration with the administrative department for industry and commerce and hand in its business licence for cancellation.

Article 23 The department under the State Council which is in charge of foreign economic relations and trade shall, in accordance with this Law, formulate rules for its implementation, which shall go into effect after being submitted to and approved by the State Council.

Article 24 This Law shall go into effect as of the date of its promulgation.

# **Law of the People's Republic of China on Prevention of Juvenile Delinquency**

Adopted at the 10th Meeting of the Standing Committee of the Ninth National People's Congress on June 28, 1999 and promulgated by Order No. 17 of the President of the People's Republic of China on June 28, 1999

## Contents

Chapter I General Provisions

Chapter II Education for Prevention of Juvenile Delinquency

Chapter III Prevention of Juvenile Misbehaviors

Chapter IV Rectification and Treatment of Serious Juvenile Misbehaviors

Chapter V Juveniles' Self-protection Against Crimes

Chapter VI Prevention of Juveniles From Committing Crimes Again

Chapter VII Legal Responsibility

Chapter VIII Supplementary Provisions

## Chapter I General Provisions

Article 1 This Law is enacted for the purpose of ensuring that juveniles are physically and mentally healthy, helping juveniles cultivate good conduct and effectively preventing juvenile delinquency.

Article 2 The prevention of juvenile delinquency shall be based on education and protection, the work shall be started with school children and efforts shall be made to prevent, rectify and treat juvenile misbehavior before it is too late.

Article 3 Juvenile delinquency shall be prevented in a comprehensive way under the organization and leadership of the people's governments at all levels.

The government departments concerned, judicial organs, people's organizations, relevant public organizations, schools, families, neighborhood committees in cities and villagers committees in the countryside, etc. shall join efforts and take their respective responsibilities in preventing juvenile delinquency, and creating a good social environment for the cultivation of physical and mental health of juveniles.

Article 4 People's governments at all levels shall perform the following functions and duties in preventing juvenile delinquency:

- (1) to formulate plans for prevention of juvenile delinquency;
- (2) to organize and coordinate efforts of the relevant government departments for public security, education, culture, the press, publishing, radio, film and television, industry and commerce, civil affairs, and judicial administration, and other public organizations in preventing juvenile delinquency;
- (3) to inspect the implementation of this Law and work plans; and
- (4) to analyze and disseminate the experience gained in prevention of juvenile delinquency, and set up and commend advanced units and individuals.

Article 5 For prevention of juvenile delinquency, research on education in puberty, psychological corrections and measures for prevention of crimes shall be improved in light of the physiological and psychological characteristics of juveniles at different ages.

## Chapter II Education for Prevention of Juvenile Delinquency

Article 6 Juveniles shall be educated in ideals, morality, the legal system as well as in patriotism, collectivism and socialism. Juveniles who have reached the age of receiving compulsory education shall, while receiving the education mentioned above, be educated for prevention of crimes.

Education for prevention of juvenile delinquency is for the purpose of enhancing juveniles' legal conceptions, helping them heed the harm done to themselves, their families and the community by their violations of law and criminal actions and become aware of the legal responsibilities incurred by such violations and actions and of the importance of obeying rules of discipline and laws and preventing themselves from breaking laws and committing crimes.

Article 7 The administrative departments for education and schools shall incorporate the education for prevention of crimes into school plans for education and teaching as the content of legal education, and shall, in combination with the common and frequently-occurring cases of juvenile delinquency, educate juveniles of different ages in prevention of delinquency respectively.

Article 8 Judicial administration departments, administrative departments for education and the Communist Youth League and Young Pioneers organizations shall, in light of specific conditions, arrange and hold exhibitions, give reports and lectures, and arrange other forms of activities to disseminate the legal system with emphasis on prevention of juvenile delinquency.

Schools shall, in light of specific conditions, hold activities with education for prevention of juvenile delinquency as the main content. The administrative departments for education shall take the results of education for prevention of juvenile delinquency as an important part of assessment of school work.

Article 9 Schools shall engage full-time or part-time teachers for legal education. Schools may engage after-school legal counselors, where conditions permit.

Article 10 Parents and other guardians of juveniles shall take direct responsibility for giving legal education to juveniles. Schools that conduct education among students in prevention of crimes, shall make their plans for such education known to the parents and other guardians of the juveniles, who shall carry out the education in combination with the school plans and according to specific conditions.

Article 11 Authorities of Children's Palaces, recreation centers for juveniles and other places for out-of-school activities shall take education for prevention of juvenile delinquency as an important part of their work and carry out various forms of publicity and education activities in this respect.

Article 12 For juveniles who have reached the age of 16 but are under the age of 18 and who are preparing for employment, vocational education and training institutions and employers shall include legal knowledge and education for prevention of crimes in vocational training.

Article 13 The neighborhood committees in cities and villagers' committees in the countryside shall carry out activities for the publicity of the legal system with stress on prevention of juvenile delinquency.

### Chapter III Prevention of Juvenile Misbehavior

Article 14 The parents and other guardians of juveniles and schools shall advise juveniles to keep from the following kinds of misbehavior:

- (1) ) playing truant, staying out at night;
- (2) carrying controlled knives;
- (3) fighting, or abusing people;
- (4) forcibly demanding money or things of value from others;
- (5) stealing, or deliberately damaging property;
- (6) taking part in gambling or gambling in disguised form;
- (7) watching or listening in to pornographic or obscene audio-video products, or reading such stuff;
- (8) going to commercial singing and dancing halls and other such places that are not suitable for juveniles as prescribed by laws and regulations; and
- (9) other kinds of misbehavior that seriously run counter to social morality.

Article 15 The parents and other guardians of juveniles and schools shall advise juveniles to keep from smoking and getting drunk. No business places may sell cigarettes or alcoholic drinks to juveniles.

Article 16 where middle or primary school students play truant, the school shall get in touch with their parents or other guardians without delay.

Where juveniles stay out at night without permission, their parents or other guardians, or the boarding school concerned shall look for them without delay, or approach a public security organ for help. Whoever allows a juvenile to stay at his or her place at night shall obtain permission of the juvenile's parents or other guardians in advance, or inform them or the school concerned of the matter within 24 hours, or report to a public security organ without delay.

Article 17 When parents or other guardians of juveniles and schools find that juveniles organize or join gangs that perpetrate misbehavior, they shall stop the juveniles promptly. When they find that the gangs have violated laws or committed criminal offences, they shall report the matter to public security organs.

Article 18 When parents or other guardians of juveniles and schools find that juveniles are instigated or coerced to perpetrate or lured into illegal or criminal actions, they shall report the matter to public security organs. When the public security organs receive the reports, they shall immediately investigate and deal with the cases in accordance with law and, where the personal safety of juveniles is endangered, they shall promptly take effective measures to protect them.

Article 19 Parents or other guardians of juveniles may not allow juveniles under the age of 16 to be free from their guardianship and live alone.

Article 20 Parents or other guardians of juveniles may not give a free rein the juveniles, compel them to run away from home, or discard their duty of guardianship.

Where juveniles run away from home, their parents and other guardians shall look for them without delay, or approach public security organs for help.

Article 21 Where the parents of juveniles are divorced, both parties shall have the duty to educate their children, and neither party may fail to perform such duty on the pretext of divorce.

Article 22 The stepparents and adoptive parents shall perform the same duty for the adolescent children they are supporting and educating as the duty performed by parents to their adolescent children in prevention of crimes, as prescribed by this Law.

Article 23 Schools shall enforce education and administration among juveniles who are involved in misbehavior and may not discriminate against them.

Article 24 The administrative departments for education and schools shall hold various forms of activities like lectures, informal discussions and training programs to make known to the participants good, effective educational methods in light of the physiological and psychological characteristics of juveniles in different stages of growth and to show the teachers, the parents of



juveniles and other guardians how to effectively prevent, and rectify and treat juveniles' misbehavior.

Article 25 Where teachers, administrators or workers instigate or coerce juveniles to perpetrate or lure them into misbehavior, or where these people are ill-behaved, have a baneful influence on and are not suitable for school work, the administrative departments for education and the school authorities shall dismiss or discharge them; where a crime is constituted, criminal responsibility shall be investigated in accordance with law.

Article 26 It is prohibited to set up commercial singing and dancing halls, commercial electronic games centers and other places that are not suitable for juveniles in the neighborhood of middle or primary schools. The kinds of halls, centers and places mentioned above shall be specified by people's governments of provinces, autonomous regions and municipalities directly under the Central Government.

The halls, centers and places set up before this Law goes into effect shall to be moved to other areas or closed down within a time limit.

Article 27 Public security organs shall tighten control for public security around middle and primary schools, promptly stop and deal with illegal or criminal actions that are committed around such schools. The neighborhood committees in cities and villagers' committees in the countryside shall assist public security organs in successfully maintaining public security around middle and primary schools.

Article 28 Public security stations, neighborhood committees in cities and villagers' committees in the countryside shall keep tabs on the schooling and employment of juveniles among temporary resident populations in their administrative areas. With regard to juveniles among temporary resident populations who perpetrate misbehavior, they shall urge the parents and other guardians of the juveniles to educate the juveniles effectively and to stop their misbehavior.

Article 29 No one may instigate or coerce juvenile to perpetrate or lure them into misbehavior prescribed by this Law, or provide conditions for them to perpetrate misbehavior.

Article 30 Publications meant for juveniles may not contain such contents as may induce juveniles to violate law or commit criminal offenses, or such contents as may impair the physical and mental health of juveniles' contents that exaggerate violence, pornography, gambling, terror, etc.

Article 31 No unit or individual may sell or loan to juveniles publications, audio-video products or electronic publications which contain such contents as may induce juveniles to violate laws or commit criminal offenses, and such contents as may impair the physical and mental health of juveniles, contents that exaggerate violence, pornography, gambling, terror, etc.

No unit or individual may, by means of telecommunications, computer network, etc., provide such contents and information about such contents that may impair the physical and mental health of juveniles as prescribed by the preceding paragraph.

Article 32 No programs of radio, film, TV and drama may contain such contents as may impair the physical and mental health of juveniles, contents that exaggerate violence, pornography, gambling, terror, etc.

The administrative departments for radio, film and television and the administrative departments for culture shall strengthen administration of the programs of radio, film, TV and drama and the various showplaces.

Article 33 Around commercial singing and dancing halls and other places that are not suitable for juveniles, conspicuous no-admittance signs for juveniles shall be put up, and no juveniles may be admitted into such places.

Juveniles may not be admitted into commercial electronic games centers except during festivals and holidays specified by the State, and conspicuous no-admittance signs for juveniles shall be put up there.

Where it is difficult to judge whether a person is juvenile or not, the worker of such a center may ask person to show his identity card.

#### Chapter IV Rectification and Treatment of Serious Juvenile Misbehavior

Article 34 " Serious misbehavior " as used in this Law refers to the following illegal actions that do serious harm to the community but are not serious enough for criminal punishment:

- (1) gathering people to create disturbance, and disrupting public order;
- (2) carrying controlled knives and refusing to stop doing so after repeated criticisms;
- (3) holding up and beating people many times or forcibly demanding money or things of value from others;
- (4) spreading obscene publications or audio-video products, etc.;
- (5) engaging in licentious or pornographic activities or harlotry;
- (6) committing theft many times;
- (7) taking part in gambling and refusing to stop doing so after repeated criticisms;
- (8) ingesting or injecting drugs; and
- (9) other actions that do serious harm to the community.

Article 35 When juveniles are found to perpetrate the serious misbehavior as prescribed by this Law, they shall be stopped doing so without delay.

When juveniles are found to perpetrate serious misbehavior as prescribed by this Law, their parents or other guardians and the schools concerned shall coordinate their efforts and take measures to subject them to strict discipline, or may send them to work-study schools for rectification or treatment, and for education.

To send juveniles to work-study schools for rectification or treatment, and for education, their parents or other guardians or their former schools shall submit applications for approval to the administrative departments for education.

Article 36 Work-study schools shall impose strict control on and enforce education among the juveniles who study there. They shall, in addition to the same courses offered by ordinary schools, as required by the Law on Compulsory Education, put emphasis on education in the legal system and help the juveniles to rectify or treat their serious misbehavior in light of the causes for such misbehavior and the psychological characteristics of the juveniles.

Families and schools shall show concern for and take good care of the juveniles who study in work-study schools and respect their personality and dignity, and may not impose physical punishment on, maltreat, or discriminate against them. Juveniles who graduate from work-study schools shall enjoy equal rights with students who graduate from ordinary schools in entering schools of a higher grade and in employment, and no unit or individual may discriminate against them.

Article 37 Juveniles who perpetrate serious misbehaviors, as specified in this Law, that constitute violations of the regulations governing public security shall be punished for public security by public security organs according to law. Juveniles who are exempted from punishment because they have not reached the age of 14 or the circumstances are especially minor may be subjected to reprimand.

Article 38 Where Juveniles are not given criminal punishment because they have not reached the age of 16, their parents or other guardians shall be ordered to subject them to strict discipline; when necessary, they may also be sheltered for correction by governments in accordance with law.

Article 39 During the period when juveniles are sheltered for correction, the executing organs shall make sure that they continue to receive education in cultural and legal knowledge or vocational techniques; for those who have not finished compulsory education, the executing organs shall make sure that they continue to receive such education.

Juveniles who are released from sheltering for correction or from reeducation through labor shall enjoy equal rights with other juveniles in going back to school and entering schools of a higher grade and in employment, and no unit or individual may discriminate against them.

## Chapter V Juveniles' Self-protection Against Crimes

Article 40 Juveniles shall observe laws and regulations and live up to the standards of public morality, be aware of the importance of self-esteem, self-discipline and self-improvement, increase their ability to distinguish between right and wrong and protect themselves, and resist of their own volition any inducement to and corrosive influence by various misbehavior and illegal and criminal actions.

Article 41 Juveniles who are abandoned or maltreated by their parents or other guardians shall have the right to request public security organs, administrative departments for civil affairs, organizations of the Communist Youth League, women's federations, organizations for protection of juveniles or schools, neighborhood committee in cities, or villagers' committees in the countryside to furnish them protection. The departments or organizations mentioned above that are request for help shall accept the request and take measures to help the juveniles immediately where necessary.

Article 42 When juveniles find that anyone perpetuates actions prohibited by the provisions in Chapter III of this Law or commits criminal offenses against themselves or other juveniles, they may report to public security organs or competent government departments through their schools, their parents or other guardians, and they themselves may do so too. The organs or departments that receive the reports shall promptly investigate and deal with the cases according to law.

Article 43 Judicial organs, schools and the community shall give especial protection to juveniles who fight and report against criminal offenses and ensure that they are free from retaliation.

## Chapter VI Prevention of Juveniles From Committing Criminal Offenses Again

Article 44 In investigating juveniles who have committed criminal offenses investigating for criminal responsibility, the guidelines of enlightenment, persuasion and reformation and the principle of taking enlightenment as the dominant factor while making punishment subsidiary shall be adhered to.

When handling cases involving juvenile delinquency, judicial organs shall guarantee that juveniles exercise their litigation rights and get legal assistance, and enlighten them on the legal system in accordance with the physiological and psychological characteristics of juveniles and the circumstances under which they commit the criminal offenses.

Juvenile students against whom mandatory penal measures are taken may not be struck off the school roll before the verdicts of the People's Courts go into effect.

Article 45 Trials of criminal cases involving juvenile delinquency in a People's Court shall be conducted by a juvenile court formed, in accordance with law, by judges who are familiar with the physical and mental characteristics of juveniles or of such judges and people's assessors.

No cases involving criminal offenses committed by juveniles who have reached the age of 14 but are under the age of 16 shall be heard in public. Generally, no cases involving criminal offenses

committed by juveniles who have reached the age of 16 but are under the age of 18 shall be heard in public either.

For cases involving criminal offenses committed by juveniles, no names, dwelling places, photos nor materials from which people can tell who the juveniles are may be disclosed in news reports, film and television programs and publications.

Article 46 Juveniles who are detained or arrested or who are serving their sentences shall be jailed, administered and educated separately from adults. During the period when juvenile delinquents are serving their sentences, the executing organ shall enforce legal education and conduct vocational and technical training among them. For juvenile delinquents who have not finished compulsory education, the executing organ shall ensure that they continue to receive such education.

Article 47 Parents and other guardians of juveniles, schools, neighborhood committees in cities and villagers' committees in the countryside shall take effective measures to help educate juveniles who are not given or are exempted from criminal punishment because they have not reached the age of 16 and juveniles who are sentenced to criminal punishment of non-imprisonment or to criminal punishment with a suspension of execution or who are released on parole, in order to assist judicial organs in a successful educating and reforming the juveniles.

The neighborhood committees in cities or villagers' committees in the countryside may engage retired persons or other persons who are exemplary in their ideology and moral character, honest and upright and enthusiastic about educational work among juveniles, to assist them in doing a good job of educating and reform the juveniles mentioned in the preceding paragraph.

Article 48 Juveniles who, in accordance with law, are exempted from criminal punishment, sentenced to criminal punishment of non-imprisonment, sentenced to criminal punishment with a suspension of execution, or released on parole, or for whom criminal punishment have executed shall enjoy equal rights with other juveniles in going back to school and entering schools of a higher grade and in employment; no unit or individual may discriminate against them.

## Chapter VII Legal Responsibility

Article 49 Where parents or other guardians of juveniles fail to perform their duties of guardianship and let juveniles perpetrate, as they like, misbehavior or serious misbehavior specified in this Law, public security organs shall reprimand the parents or other guardians of the juveniles and order them to subject the juveniles to strict discipline.

Article 50 Where parents or other guardians of juveniles, in violation of the provisions in Article 19 of this Law, allow juveniles under the age of 16 to be free from their guardianship and live alone, public security organs shall reprimand the parents and other guardians of the juveniles and order them to set it right immediately.

Article 51 Where a member of a public security organ, in violation of the provisions in Article 18 of this Law, fails to investigate and deal with a case or take effective measures immediately after receiving the report and thus grossly neglects his duty, he shall be given administrative sanctions; if serious consequences are caused and a crime is constituted, he shall be investigated for criminal responsibility in accordance with law.

Article 52 If anyone, in violation of the provisions in Article 30 of this Law, publishes publications which contain such contents as may induce juveniles to violate laws or commit criminal offenses, or such contents as may impair the physical and mental health of juveniles, contents that exaggerate violence, pornography, gambling, terror, etc., the publications and his illegal gains shall be confiscated by the administrative department for publishing, and he shall also be fined not less than 3 times but not more than 10 times his illegal gains; if the circumstances are serious, the publications and his illegal gains shall be confiscated, he shall be ordered to suspend business for rectification or his license shall be revoked. The persons who are directly in charge and the other persons who are directly responsible shall be fined.

Whoever produces or reproduces publications for juveniles which propagate obscenity or sells, loans or spreads such publications shall be punished for public security in accordance with law; if the violation constitutes a crime, he shall be investigated for criminal responsibility in accordance with law.

Article 53 If anyone, in violation of the provisions in Article 31 of this Law, sells or loans to juveniles publications, audio-video products or electronic publications which contain such contents as may induce juveniles to violate laws or commit criminal offenses, and such contents as may impair the physical and mental health of juveniles, contents that exaggerate violence, pornography, gambling, terror, etc., or, by means of telecommunications, computer network, etc., provides such contents and information about such contents that may impair the physical and mental health of juveniles, the said publications, audio-video products, electronic publications and his illegal gains shall be confiscated and he shall be fined by the competent government department.

If any unit commits any action mentioned in the preceding paragraph, the publications, audio-video products, electronic publications and its illegal gains shall be confiscated, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible shall also be fined.

Article 54 If any cinema, theatre, video-tapes show hall and other show place shows or plays such programs as may impair the physical and mental health of juveniles, programs that exaggerate violence, pornography, gambling, terror, etc., the audio-video products which it illegally shows or plays and its illegal gains shall be confiscated by the competent government department, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible shall also be fined; if the circumstances are serious, it shall be ordered to suspend business for rectification or its business license shall be revoked by the administrative department for industry and commerce.

Article 55 If commercial singing and dancing halls, other places that are not suitable for juveniles, and commercial TV games centers, in violation of the provisions in Article 33 of this Law, fail to put up conspicuous no-admittance signs or allow juveniles to go there, they shall be ordered to set it right, given administrative warning, ordered to suspend business for rectification, their illegal gains shall be confiscated, and they shall be fined by the administrative department for culture, and the persons who are directly in charge and the other persons who are directly responsible shall also be fined; if the circumstances are serious, the administrative department for industry and commerce shall revoke their business licences.

Article 56 Whoever instigates or coerces juveniles to perpetrate or lures them into misbehavior or serious misbehavior as prescribed by this Law, or provides conditions for juveniles to perpetrate the said misbehavior, if his action constitutes a violation of the regulations governing public security, shall be punished for public security by a public security organ in accordance with law; if a crime is constituted, he shall be investigated for criminal responsibility in accordance with law.

## Chapter VIII Supplementary Provisions

Article 57 This Law shall go into effect as of November 1, 1999.

# **Criminal Law of the People's Republic of China**

Adopted at the Second Session of the Fifth National People's Congress on July 1, 1979; revised at the Fifth Session of the Eighth National People's Congress on March 14, 1997 and promulgated by Order No.83 of the President of the People's Republic of China on March 14, 1997

## Contents

### Part One General Provisions

#### Chapter I The Aim, Basic Principles and Scope of Application of the Criminal Law

#### Chapter II Crimes

##### Section 1 Crimes and Criminal Responsibility

##### Section 2 Preparation for a Crime, Criminal Attempt and Discontinuation of a Crime

##### Section 3 Joint Crimes

##### Section 4 Crimes Committed by a Unit

#### Chapter III Punishments

##### Section 1 Types of Punishments

##### Section 2 Public Surveillance

##### Section 3 Criminal Detention

##### Section 4 Fixed-term Imprisonment and Life Imprisonment

##### Section 5 The Death Penalty

##### Section 6 Fines

##### Section 7 Deprivation of Political Rights

##### Section 8 Confiscation of Property

#### Chapter IV The Concrete Application of Punishments

##### Section 1 Sentencing

##### Section 2 Recidivists

##### Section 3 Voluntary Surrender and Meritorious Performance

##### Section 4 Combined Punishment for Several Crimes



Section 5 Suspension of Sentence

Section 6 Commutation of Punishment

Section 7 Parole

Section 8 Limitation

Chapter V Other Provisions

Part Two Specific Provisions

Chapter I Crimes of Endangering National Security

Chapter II Crimes of Endangering Public Security

Chapter III Crimes of Disrupting the Order of the Socialist Market Economy

Section 1 Crimes of Producing and Marketing Fake or Substandard Commodities

Section 2 Crimes of Smuggling

Section 3 Crimes of Disrupting the Order of Administration of Companies and Enterprises

Section 4 Crimes of Disrupting the Order of Financial Administration

Section 5 Crimes of Financial Fraud

Section 6 Crimes of Jeopardizing Administration of Tax Collection

Section 7 Crimes of Infringing on Intellectual Property Rights

Section 8 Crimes of Disrupting Market Order

Chapter IV Crimes of Infringing upon Citizens' Right of the Person and Democratic Rights

Chapter V Crimes of Property Violation

Chapter VI Crimes of Obstructing the Administration of Public Order

Section 1 Crimes of Disturbing Public Order

Section 2 Crimes of Impairing Judicial Administration

Section 3 Crimes Against Control of National Border (Frontier)

Section 4 Crimes Against Control of Cultural Relics

Section 5 Crimes of Impairing Public Health

Section 6 Crimes of Impairing the Protection of Environment and Resources

Section 7 Crimes of Smuggling, Trafficking in, Transporting and Manufacturing Narcotic Drugs

Section 8 Crimes of Organizing, Forcing, Luring, Sheltering or Procuring Other Persons to Engage in Prostitution

Section 9 Crimes of Producing, Selling, Disseminating Pornographic Materials

Chapter VII Crimes of Impairing the Interests of National Defence

Chapter VIII Crimes of Embezzlement and Bribery

Chapter IX Crimes of Dereliction of Duty

Chapter X Crimes of Servicemen's Transgression of Duties

Chapter XI Supplementary Provisions

Part One General Provisions

Chapter I The Aim, Basic Principles and Scope of Application of the Criminal Law

Article 1 In order to punish crimes and protect the people, this Law is enacted on the basis of the Constitution and in the light of the concrete experiences and actual circumstances in China's fight against crimes.

Article 2 The aim of the Criminal Law of the People's Republic of China is to use criminal punishments to fight against all criminal acts in order to safeguard security of the State, to defend the State power of the people's democratic dictatorship and the socialist system, to protect property owned by the State, and property collectively owned by the working people and property privately owned by citizens, to protect citizens' rights of the person and their democratic and other rights, to maintain public and economic order, and to ensure the smooth progress of socialist construction.

Article 3 For acts that are explicitly defined as criminal acts in law, the offenders shall be convicted and punished in accordance with law; otherwise, they shall not be convicted or punished.

Article 4 The law shall be equally applied to anyone who commits a crime. No one shall have the privilege of transcending the law.

Article 5 The degree of punishment shall be commensurate with the crime committed and the criminal responsibility to be borne by the offender.

Article 6 This Law shall be applicable to anyone who commits a crime within the territory and territorial waters and space of the People's republic of China, except as otherwise specifically provided by law.

This Law shall also be applicable to anyone who commits a crime on board a ship or aircraft of the People's Republic of China.

If a criminal act or its consequence takes place within the territory or territorial waters or space of the People's Republic of China, the crime shall be deemed to have been committed within the territory and territorial waters and space of the People's Republic of China.

Article 7 This Law shall be applicable to any citizen of the People's Republic of China who commits a crime prescribed in this Law outside the territory and territorial waters and space of the People's Republic of China; however, if the maximum punishment to be imposed is fixed-term imprisonment of not more than three years as stipulated in this Law, he may be exempted from the investigation for his criminal responsibility.

This Law shall be applicable to any State functionary or serviceman who commits a crime prescribed in this Law outside the territory and territorial waters and space of the People's Republic of China.

Article 8 This Law may be applicable to any foreigner who commits a crime outside the territory and territorial waters and space of the People's Republic of China against the State of the People's Republic of China or against any of its citizens, if for that crime this Law prescribes a minimum punishment of fixed-term imprisonment of not less than three years; however, this does not apply to a crime that is not punishable according to the laws of the place where it is committed.

Article 9 This Law shall be applicable to crimes which are stipulated in international treaties concluded or acceded to by the People's Republic of China and over which the People's Republic of China exercises criminal jurisdiction within the scope of obligations, prescribed in these treaties, it agrees to perform.

Article 10 Any person who commits a crime outside the territory and territorial waters and space of the People's Republic of China, for which according to this Law he should bear criminal responsibility, may still be investigated for his criminal responsibility according to this Law, even if he has already been tried in a foreign country. However, if he has already received criminal punishment in the foreign country, he may be exempted from punishment or given a mitigated punishment.

Article 11 The criminal responsibility of foreigners who enjoy diplomatic privileges and immunities shall be solved through diplomatic channels.

Article 12 If an act committed after the founding of the People's Republic of China and before the entry into force of this Law was not deemed a crime under the laws at the time, those laws shall apply. If the act was deemed a crime under the laws in force at the time and is subject to prosecution under the provisions of Section 8, Chapter IV of the General Provisions of this Law, criminal responsibility shall be investigated in accordance with those laws. However, if according to this Law the act is not deemed a crime or is subject to a lighter punishment, this Law shall apply.

Before the entry into force of this Law, any judgment that has been made and has become effective according to the laws at the time shall remain valid.

## Chapter II Crimes

### Section 1 Crimes and Criminal Responsibility

Article 13 A crime refers to an act that endangers the sovereignty, territorial integrity and security of the State, splits the State, subverts the State power of the people's democratic dictatorship and overthrows the socialist system, undermines public and economic order, violates State-owned property, property collectively owned by the working people, or property privately owned by citizens, infringes on the citizens' rights of the person, their democratic or other rights, and any other act that endangers society and is subject to punishment according to law. However, if the circumstances are obviously minor and the harm done is not serious, the act shall not be considered a crime.

Article 14 An intentional crime refers to an act committed by a person who clearly knows that his act will entail harmful consequences to society but who wishes or allows such consequences to occur, thus constituting a crime.

Criminal responsibility shall be borne for intentional crimes.

Article 15 A negligent crime refers to an act committed by a person who should have foreseen that his act would possibly entail harmful consequences to society but who fails to do so through his negligence or, having foreseen the consequences, readily believes that they can be avoided, so that the consequences do occur.

Criminal responsibility shall be borne for negligent crimes only when the law so provides.

Article 16 An act is not a crime if it objectively results in harmful consequences due to irresistible or unforeseeable causes rather than intent or negligence.

Article 17 If a person who has reached the age of 16 commits a crime, he shall bear criminal responsibility.

If a person who has reached the age of 14 but not the age of 16 commits intentional homicide, intentionally hurts another person so as to cause serious injury or death of the person, or commits rape, robbery, drug-trafficking, arson, explosion or poisoning, he shall bear criminal responsibility.

If a person who has reached the age of 14 but not the age of 18 commits a crime, he shall be given a lighter or mitigated punishment.

If a person is not given criminal punishment because he has not reached the age of 16, the head of his family or his guardian shall be ordered to discipline him. When necessary, he may be taken in by the government for rehabilitation.

Article 18 If a mental patient causes harmful consequences at a time when he is unable to recognize or control his own conduct, upon verification and confirmation through legal procedure, he shall

not bear criminal responsibility, but his family members or guardian shall be ordered to keep him under strict watch and control and arrange for his medical treatment. When necessary, the government may compel him to receive medical treatment.

Any person whose mental illness is of an intermittent nature shall bear criminal responsibility if he commits a crime when he is in a normal mental state.

If a mental patient who has not completely lost the ability of recognizing or controlling his own conduct commits a crime, he shall bear criminal responsibility; however, he may be given a lighter or mitigated punishment.

Any intoxicated person who commits a crime shall bear criminal responsibility.

Article 19 Any deaf-mute or blind person who commits a crime may be given a lighter or mitigated punishment or be exempted from punishment.

Article 20 An act that a person commits to stop an unlawful infringement in order to prevent the interests of the State and the public, or his own or other person's rights of the person, property or other rights from being infringed upon by the on-going infringement, thus harming the perpetrator, is justifiable defence, and he shall not bear criminal responsibility.

If a person's act of justifiable defence obviously exceeds the limits of necessity and causes serious damage, he shall bear criminal responsibility; however, he shall be given a mitigated punishment or be exempted from punishment.

If a person acts in defence against an on-going assault, murder, robbery, rape, kidnap or any other crime of violence that seriously endangers his personal safety, thus causing injury or death to the perpetrator of the unlawful act, it is not undue defence, and he shall not bear criminal responsibility.

Article 21 If a person is compelled to commit an act in an emergency to avert an immediate danger to the interests of the State or the public, or his own or another person's rights of the person, property or other rights, thus causing damage, he shall not bear criminal responsibility.

If the act committed by a person in an emergency to avert danger exceeds the limits of necessity and causes undue damage, he shall bear criminal responsibility; however, he shall be given a mitigated punishment or be exempted from punishment.

The provisions of the first paragraph of this Article with respect to averting danger to oneself shall not apply to a person who is charged with special responsibility in his post or profession.

## Section 2 Preparation for a Crime, Criminal Attempt and Discontinuation of a Crime

Article 22 Preparation for a crime refers to the preparation of the instruments or the creation of the conditions for a crime.

An offender who prepares for a crime may, in comparison with one who completes the crime, be given a lighter or mitigated punishment or be exempted from punishment.

Article 23 A criminal attempt refers to a case where an offender has already started to commit a crime but is prevented from completing it for reasons independent of his will.

An offender who attempts to commit a crime may, in comparison with one who completes the crime, be given a lighter or mitigated punishment.

Article 24 Discontinuation of a crime refers to a case where, in the course of committing a crime, the offender voluntarily discontinues the crime or voluntarily and effectively prevents the consequences of the crime from occurring.

An offender who discontinues a crime shall, if no damage is caused, be exempted from punishment or, if any damage is caused, be given a mitigated punishment.

### Section 3 Joint Crimes

Article 25 A joint crime refers to an intentional crime committed by two or more persons jointly.

A negligent crime committed by two or more persons jointly shall not be punished as a joint crime; however, those who should bear criminal responsibility shall be individually punished according to the crimes they have committed.

Article 26 A principal criminal refers to any person who organizes and leads a criminal group in carrying out criminal activities or plays a principal role in a joint crime.

A criminal group refers to a relatively stable criminal organization formed by three or more persons for the purpose of committing crimes jointly.

Any ringleader who organizes or leads a criminal group shall be punished on the basis of all the crimes that the criminal group has committed.

Any principal criminal not included in Paragraph 3 shall be punished on the basis of all the crimes that he participates in or that he organizes or directs.

Article 27 An accomplice refers to any person who plays a secondary or auxiliary role in a joint crime.

An accomplice shall be given a lighter or mitigated punishment or be exempted from punishment.

Article 28 Anyone who is coerced to participate in a crime shall be given a mitigated punishment or be exempted from punishment in the light of the circumstances of the crime he commits.

Article 29 Anyone who instigates another to commit a crime shall be punished according to the role he plays in a joint crime. Anyone who instigates a person under the age of 18 to commit a crime shall be given a heavier punishment.

If the instigated person has not committed the instigated crime, the instigator may be given a lighter or mitigated punishment.

### Section 4 Crimes Committed by a Unit

Article 30 Any company, enterprise, institution, State organ, or organization that commits an act that endangers society, which is prescribed by law as a crime committed by a unit, shall bear criminal responsibility.

Article 31 Where a unit commits a crime, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be given criminal punishment. Where it is otherwise provided for in the Specific Provisions of this Law or in other laws, those provisions shall prevail.

## Chapter III Punishments

### Section 1 Types of Punishments

Article 32 Punishments are divided into principal punishments and supplementary punishments.

Article 33 The principal punishments are as follows:

- (1) public surveillance;
- (2) criminal detention;
- (3) fixed-term imprisonment;
- (4) life imprisonment; and
- (5) the death penalty.

Article 34 The supplementary punishments are as follows:

- (1) fine;
- (2) deprivation of political rights; and
- (3) confiscation of property.

Supplementary punishments may be imposed independently.

Article 35 Deportation may be imposed independently or supplementarily to a foreigner who commits a crime.

Article 36 If a victim suffers economic losses as a result of a crime, the criminal shall, in addition to receiving a criminal punishment according to law, be sentenced to compensation for the economic losses in the light of the circumstances.

If a criminal who is liable for civil compensation is sentenced to a fine at the same time but his property is not sufficient to pay both the compensation and the fine, or if he is sentenced to

confiscation of property at the same time, he shall, first of all, bear his liability for civil compensation to the victim.

Article 37 If the circumstances of a person's crime are minor and do not require criminal punishment, he may be exempted from it; however, he may, depending on the different circumstances of the case, be reprimanded or ordered to make a statement of repentance, offer an apology or pay compensation for the losses, or be subjected to administrative penalty or administrative sanctions by the competent department.

## Section 2 Public Surveillance

Article 38 The term of public surveillance shall be not less than three months but not more than two years.

Where a criminal is sentenced to public surveillance, the sentence shall be executed by a public security organ.

Article 39 Any criminal who is sentenced to public surveillance shall observe the following during the term in which his sentence is being executed:

- (1) observe laws and administrative rules and regulations, and submit to supervision;
- (2) exercise no right of freedom of speech, of the press, of assembly, of association, of procession or of demonstration without the approval of the organ executing the public surveillance;
- (3) report on his own activities as required by the organ executing the public surveillance;
- (4) observe the regulations for receiving visitors stipulated by the organ executing the public surveillance; and
- (5) report to obtain approval from the organ executing the public surveillance for any departure from the city or county he lives in or for any change in residence.

Criminals sentenced to public surveillance shall, while engaged in labour, receive equal pay for equal work.

Article 40 Upon the expiration of a term of public surveillance, the executing organ shall immediately announce the termination of public surveillance to the criminal sentenced to public surveillance and to his work unit or the people of the place where he resides.

Article 41 A term of public surveillance shall be counted from the date the judgment begins to be executed; if the criminal is held in custody before the execution of the judgment, one day in custody shall be considered two days of the term sentenced.

## Section 3 Criminal Detention

Article 42 A term of criminal detention shall be not less than one month but not more than 6 months.



Article 43 Where a criminal is sentenced to criminal detention, the sentence shall be executed by the public security organ in the vicinity.

During the period of execution, a criminal sentenced to criminal detention may go home for one to two days each month; an appropriate remuneration may be given to those who participate in labor.

Article 44 A term of criminal detention shall be counted from the date the judgment begins to be executed; if the criminal is held in custody before the execution of the judgment, one day in custody shall be considered one day of the term sentenced.

#### Section 4 Fixed-term Imprisonment and Life Imprisonment

Article 45 A term of fixed-term imprisonment shall be not less than six months but not more than 15 years, except as stipulated in Articles 50 and 69 of this Law.

Article 46 Any criminal who is sentenced to fixed-term imprisonment or life imprisonment shall serve his sentence in prison or another place for the execution. Anyone who is able to work shall do so to accept education and reform through labor.

Article 47 A term of fixed-term imprisonment shall be counted from the date the judgment begins to be executed; if the criminal is held in custody before the execution of the judgment, one day in custody shall be considered one day of the term sentenced.

#### Section 5 The Death Penalty

Article 48 The death penalty shall only be applied to criminals who have committed extremely serious crimes. If the immediate execution of a criminal punishable by death is not deemed necessary, a two-year suspension of execution may be pronounced simultaneously with the imposition of the death sentence.

All death sentences, except for those that according to law should be decided by the Supreme People's Court, shall be submitted to the Supreme People's Court for verification and approval. Death sentences with a suspension of execution may be decided or verified and approved by a Higher People's Court.

Article 49 The death penalty shall not be imposed on persons who have not reached the age of 18 at the time the crime is committed or on women who are pregnant at the time of trial.

Article 50 Anyone who is sentenced to death with a suspension of execution commits no intentional crime during the period of suspension, his punishment shall be commuted to life imprisonment upon the expiration of the two-year period; if he has truly performed major meritorious service, his punishment shall be commuted to fixed-term imprisonment of not less than 15 years but not more than 20 years upon the expiration of the two-year period; if it is verified that he has committed an intentional crime, the death penalty shall be executed upon verification and approval of the Supreme People's Court.

Article 51 The term of suspension of execution of a death penalty shall be counted from the date the judgment becomes final. The term of a fixed-term imprisonment that is commuted from a

death penalty with suspension of execution shall be counted from the date the suspension of execution expires.

## Section 6 Fines

Article 52 The amount of any fine imposed shall be determined according to the circumstances of the crime.

Article 53 A fine may be paid in a lump sum or in installments within the time limit specified in the judgment. If a fine is not paid upon the expiration of that time limit, the payment shall be compelled. If a person is not able to pay the fine in full, the People's Court shall demand the payment whenever it finds the person has property for execution of the fine. If a person has true difficulties in paying because of an irresistible disaster, the fine may be reduced or remitted according to the circumstances.

## Section 7 Deprivation of Political Rights

Article 54 Deprivation of political rights refers to deprivation of the following rights:

- (1) the right to vote and to stand for election;
- (2) the rights of freedom of speech, of the press, of assembly, of association, of procession and of demonstration;
- (3) the right to hold a position in a State organ; and
- (4) the right to hold a leading position in any State-owned company, enterprise, institution or people's organization.

Article 55 A term of deprivation of political rights shall be not less than one year but not more than five years, except as stipulated in Article 57 of this Law.

Anyone who is sentenced to public surveillance is deprived of political rights as a supplementary punishment, the term of deprivation of political rights shall be the same as the term of public surveillance, and the punishments shall be executed simultaneously.

Article 56 Anyone who commits the crime of endangering national security shall be sentenced to deprivation of political rights as a supplementary punishment; anyone who commits the crime of seriously undermining public order by intentional homicide, rape, arson, explosion, poisoning or robbery may be sentenced to deprivation of political rights as a supplementary punishment.

Where deprivation of political rights is imposed exclusively, the Specific Provisions of this Law shall apply.

Article 57 Any criminal who is sentenced to death or to life imprisonment shall be deprived of his political rights for life.

When a death penalty with a suspension of execution is commuted to a fixed-term imprisonment, or a life imprisonment is commuted to a fixed-term imprisonment, the term of the supplementary

punishment of deprivation of political rights shall be changed to not less than three years but not more than 10 years.

Article 58 A term of deprivation of political rights as a supplementary punishment shall be counted from the date on which imprisonment or criminal detention ends or from the date on which parole begins. Deprivation of political rights shall, as a matter of course, be in effect during the period in which the principal punishment is being executed.

Any criminal who is deprived of his political rights shall, during the period of execution, observe laws, administrative rules and regulations and other regulations governing supervision and control stipulated by the department of public security under the State Council and submit to supervision; he shall not exercise any of the rights listed in Article 54 of this Law.

#### Section 8 Confiscation of Property

Article 59 Confiscation of property refers to the confiscation of part or all of the property personally owned by a criminal. Where confiscation of all the property of a criminal is imposed, the amount necessary for the daily expenses of the criminal himself and the family members supported by him shall be taken out.

When a sentence of confiscation of property is imposed, property that the criminal's family members own or should own shall not be subject to confiscation.

Article 60 Where it is necessary to use part of the confiscated property to repay the legitimate debts that the criminal incurred before his property is confiscated, the debts shall be repaid at the request of the creditors.

### Chapter IV The Concrete Application of Punishments

#### Section 1 Sentencing

Article 61 When sentencing a criminal, a punishment shall be meted out on the basis of the facts, nature and circumstances of the crime, the degree of harm done to society and the relevant provisions of this Law.

Article 62 In cases where the circumstances of a crime call for a heavier or lighter punishment under the provisions of this Law, the criminal shall be sentenced to a punishment within the limits of the prescribed punishment.

Article 63 In cases where the circumstances of a crime call for a mitigated punishment under the provisions of this Law, the criminal shall be sentenced to a punishment less than the prescribed punishment.

In cases where the circumstances of a crime do not warrant a mitigated punishment under the provisions of this Law, however, in the light of the special circumstances of the case, and upon

verification and approval of the Supreme People's Court, the criminal may still be sentenced to a punishment less than the prescribed punishment.

Article 64 All money and property illegally obtained by a criminal shall be recovered, or compensation shall be ordered; the lawful property of the victim shall be returned without delay; and contrabands and possessions of the criminal that are used in the commission of the crime shall be confiscated. All the confiscated money and property and fines shall be turned over to the State treasury, and no one may misappropriate or privately dispose of them.

## Section 2 Recidivists

Article 65 If a criminal commits another crime punishable by fixed-term imprisonment or heavier penalty within five years after serving his sentence of not less than fixed-term imprisonment or receiving a pardon, he is a recidivist and shall be given a heavier punishment. However, this shall not apply to cases of negligent crime.

For criminals who are paroled, the period stipulated in the preceding paragraph shall be counted from the date the parole expires.

Article 66 If a criminal of endangering national security commits the same crime again at any time after serving his sentence or receiving a pardon shall be dealt with as a recidivist.

## Section 3 Voluntary Surrender and Meritorious Performance

Article 67 Voluntary surrender refers to the act of voluntarily delivering oneself up to justice and truthfully confessing one's crime after one has committed the crime. Any criminal who voluntarily surrenders may be given a lighter or mitigated punishment. The ones whose crimes are relatively minor may be exempted from punishment.

If a criminal suspect or a defendant under compulsory measures or a criminal serving a sentence truthfully confesses his other crimes that the judicial organ does not know, his act shall be regarded as voluntary surrender.

Article 68 Any criminal who performs such meritorious services as exposing an offence committed by another, which is verified through investigation, or producing important clues for solving other cases may be given a lighter or mitigated punishment. Any criminal who performs major meritorious services may be given a mitigated punishment or be exempted from punishment.

Any criminal who not only voluntarily surrenders after committing the crime but also performs major meritorious services shall be given a mitigated punishment or be exempted from punishment.

## Section 4 Combined Punishment for Several Crimes

Article 69 For a criminal who commits several crimes before a judgment is pronounced, unless he is sentenced to death or life imprisonment, his term of punishment shall be not more than the total of the terms for all the crimes but not less than the longest of the terms for the crimes, depending on the circumstances of the crimes. However, the term of public surveillance may not exceed the

maximum of three years, the term of criminal detention may not exceed the maximum of one year, and fixed-term imprisonment may not exceed the maximum of 20 years.

If among the crimes there is any for which a supplementary punishment is imposed, the supplementary punishment shall still be executed.

Article 70 If, after a judgment has been pronounced but before the punishment has been completely executed, it is discovered that before the judgment is pronounced the criminal committed another crime for which he is not sentenced, a judgment shall also be rendered for the newly discovered crime; the punishment to be executed shall be determined on the basis of the punishments imposed in the earlier and latest judgments and according to the provisions of Article 69 of this Law. Any portion of the term that has already been served shall count towards fulfilment of the term imposed by the latest judgment.

Article 71 If, after a judgment has been pronounced but before the punishment has been completely executed, the criminal again commits a crime, another judgment shall be rendered for the newly committed crime; the punishment to be executed shall be determined on the basis of the punishment that remains to be executed for the earlier crime and the punishment imposed for the new crime and according to the provisions of Article 69 of this Law. Section 5 Suspension of Sentence

Article 72 A suspension of sentence may be granted to a criminal sentenced to criminal detention or to fixed-term imprisonment of not more than three years if, according to the circumstances of his crime and his demonstration of repentance, it is certain that suspension of the sentence will not result in further harm to society.

If a supplementary punishment is imposed on a criminal whose sentence is suspended, the supplementary punishment shall still be executed.

Article 73 The probation period for suspension of criminal detention shall be not less than the term originally decided but not more than one year, however, it may not be less than two months.

The probation period for suspension of fixed-term imprisonment shall be not less than the term originally decided but not more than five years, however, it may not be less than one year.

The probation period for suspension of sentence shall be counted from the date the judgment is made final.

Article 74 Suspension of sentence shall not be applied to recidivists.

Article 75 A criminal whose sentence is suspended shall observe the followings:

- (1) to observe laws and administrative rules and regulations, and submit to supervision;
- (2) to report on his own activities as required by the observing organ;
- (3) to observe the regulations for receiving visitors stipulated by the observing organ; and

(4) to report to obtain approval from the observing organ for any departure from the city or county he lives in or for any change in residence.

Article 76 Any criminal whose sentence is suspended shall, during the probation period for suspension of sentence, be subjected to observation by a public security organ with the cooperation of the work unit to which he belongs or of a grass-roots organization, and in the absence of the circumstances prescribed in Article 77 of this Law, the punishment originally decided shall cease to be executed upon the expiration of the probation period for suspension of sentence, which shall be made known publicly.

Article 77 If, during the probation period for suspension of sentence, a criminal whose sentence is suspended commits a crime again or it is discovered that before the judgment is pronounced, he has committed another crime for which he is not sentenced, the suspension shall be revoked and another judgment rendered for the newly committed or discovered crime; the punishment to be executed shall be decided on the basis of the punishments for the old crime and the new crime and according to the provisions of Article 69 of this Law.

If, during the probation period for suspension of sentence, a criminal whose sentence is suspended violates laws, administrative rules and regulations or regulations relating to supervision and control over suspension of sentence stipulated by the department of public security under the State Council and if the circumstances are serious, the suspension shall be revoked and the original punishment shall be executed.

#### Section 6 Commutation of Punishment

Article 78 The punishment of a criminal sentenced to public surveillance, criminal detention, fixed-term imprisonment or life imprisonment may be commuted if, while serving his sentence, he conscientiously observes prison regulations, accepts education and reform through labor and shows true repentance or performs meritorious services; the punishment shall be commuted if a criminal performs any of the following major meritorious services:

- (1) preventing another person from conducting major criminal activities;
- (2) informing against major criminal activities conducted inside or outside prison and verified through investigation;
- (3) having inventions or important technical innovations to his credit;
- (4) coming to the rescue of another in everyday life and production at the risk of losing his own life;
- (5) performing remarkable services in fighting against natural disasters or curbing major accidents;
- or
- (6) making other major contributions to the country and society.

After commutation, the term of punishment actually to be served by those sentenced to public surveillance, criminal detention or fixed-term imprisonment may not be less than half of the term originally decided; for those sentenced to life imprisonment, it may not be less than 10 years.

Article 79 If punishment to a criminal is to be commuted, the executing organ shall submit to a People's Court at or above the intermediate level a written proposal for commutation of punishment. The People's Court shall form a collegiate panel for examination and, if the criminal is found to have shown true repentance or performed meritorious services, issue an order of commutation. However, no punishment shall be commuted without going through legal procedure.

Article 80 A term of fixed-term imprisonment that is commuted from life imprisonment shall be counted from the date the order of commutation is issued.

#### Section 7 Parole

Article 81 A criminal sentenced to fixed-term imprisonment who has served more than half of the term of the original sentence or a criminal sentenced to life imprisonment who has served not less than 10 years of the term may be granted parole if he conscientiously observes prison regulations, accepts education and reform through labor, shows true repentance and will no longer cause harm to society. If special circumstances exist, upon verification and approval of the Supreme People's Court, the above restrictions relating to the term served may be disregarded.

No parole shall be granted to recidivists or criminals who are sentenced to more than 10 years of imprisonment or life imprisonment for crimes of violence such as homicide, explosion, robbery, rape and kidnap.

Article 82 Parole shall be granted to a criminal through the procedure prescribed in Article 79 of this Law. No parole shall be granted without going through legal procedure.

Article 83 The probation period for parole in the case of fixed-term imprisonment shall be equal to the portion of the term that has not been completed; the probation period for parole in the case of life imprisonment shall be 10 years.

The probation period for parole shall be counted from the date the criminal is released on parole.

Article 84 Any criminal who is granted parole shall observe the following:

- (1) observe laws and administrative rules and regulations, and submit to supervision;
- (2) report on his own activities as required by the supervising organ;
- (3) observe the regulations for receiving visitors stipulated by the supervising organ; and
- (4) report to obtain approval from the supervising organ for any departure from the city or county he lives in or for any change in residence.

Article 85 Any criminal who is granted parole shall be subject to supervision by a public security organ during the probation period for parole. If he is not found in any of the circumstances prescribed in Article 86 of this Law, the punishment originally decided shall be considered executed upon the expiration of the probation period for parole, which shall be made known publicly.

Article 86 If a criminal who is granted parole commits another crime during the probation period for parole, the parole shall be revoked, and he shall be given a combined punishment for several crimes as provided in Article 71 of this Law.

If a criminal who is granted parole is discovered to have committed, before the judgment is pronounced, other crimes for which no punishment is imposed, the parole shall be revoked and a combined punishment for several crimes shall be given according to the provisions of Article 70 of this Law.

If a criminal who is granted parole, during the probation period for parole, violates laws, administrative rules and regulations or other regulations relating to supervision and control over parole stipulated by the department of public security under the State Council but the violation does not constitute a new crime, the parole shall be revoked in accordance with legal procedure and he shall be put back into prison to serve the remaining part of criminal punishment.

#### Section 8 Limitation

Article 87 Crimes shall not be prosecuted if the following periods have elapsed:

- (1) five years, when the maximum punishment prescribed is fixed-term imprisonment of less than five years;
- (2) 10 years, when the maximum punishment prescribed is fixed-term imprisonment of not less than five years but less than 10 years;
- (3) 15 years, when the maximum punishment prescribed is fixed-term imprisonment of not less than 10 years; and
- (4) 20 years, when the maximum punishment prescribed is life imprisonment or death penalty. If after 20 years it is considered necessary to prosecute a crime, the matter shall be submitted to the Supreme People's Procuratorate for examination and approval.

Article 88 No limitation on the period for prosecution shall be imposed with respect to a criminal who escapes from investigation or trial after a People's Procuratorate, public security organ or national security organ files the case or a People's Court accepts the case.

No limitation on the period for prosecution shall be imposed with respect to a case which should have been but is not filed by a People's Court, People's Procuratorate or public security organ after the victim brings a charge within the period for prosecution.

Article 89 The limitation period for prosecution shall be counted from the date the crime is committed; if the criminal act is of a continual or continuous nature, it shall be counted from the date the criminal act is terminated.

If further crime is committed during a limitation period for prosecution, the limitation period for prosecution of the old crime shall be counted from the date the new crime is committed.



## Chapter V Other Provisions

Article 90 Where the provisions of this Law cannot be completely applied in national autonomous areas, the people's congresses of the autonomous regions or the provinces concerned may formulate adaptive or supplementary provisions on the basis of the political, economic and cultural characteristics of the local ethnic groups and the basic principles stipulated in this Law, and these provisions shall go into effect after they have been submitted to and approved by the Standing Committee of the National People's Congress.

Article 91 "Public property" as mentioned in this Law refers to the following;

- (1) property owned by the State;
- (2) property owned collectively by working people; and
- (3) public donations or special funds used for elimination of poverty or for other public welfare undertakings.

Private property that is being managed, used or transported by State organs, State-owned companies and enterprises, or enterprises owned by collectives, or people's organizations shall be treated as public property.

Article 92 "Citizens' privately owned property" as mentioned in this Law refers to the following;

- (1) citizens' lawful earnings, savings, houses and other means of subsistence;
- (2) any means of production that is under private or family ownership according to law;
- (3) property lawfully owned by self-employed workers or private enterprises; and
- (4) shares, stocks, bonds and other property that are under private ownership according to law.

Article 93 "State functionaries" as mentioned in this Law refers to persons who perform public service in State organs.

Persons who perform public service in State-owned companies or, enterprises, institutions or people's organizations, persons who are assigned by State organs, State-owned companies, enterprises or institutions to companies, enterprises or institutions that are not owned by the State or people's organizations to perform public service and the other persons who perform public service according to law shall all be regarded as State functionaries.

Article 94 "Judicial officers" as mentioned in this Law refers to persons who exercise the functions of investigation, prosecution, adjudication and supervision and control.

Article 95 "Serious injuries" as mentioned in this Law refers to any of the following:

- (1) injuries resulting in a person's disability or disfigurement;
- (2) injuries resulting in a person's loss of his hearing, sight or the function of any other organ; or

(3) other injuries that cause grave harm to a person's physical health.

Article 96 "Violation of State regulations" as mentioned in this Law refers to violation of the laws enacted or decisions made by the National People's Congress or its Standing Committee and the administrative rules and regulations formulated, the administrative measures adopted and the decisions or orders promulgated by the State Council.

Article 97 "Ringleader" as mentioned in this Law refers to any criminal who plays the role of organizing, plotting or directing in a crime committed by a criminal group or a crowd.

Article 98 "To be handled only upon complaint" as mentioned in this Law means that a case shall only be handled if the victim brings a complaint. However, if the victim is unable to bring a complaint because of coercion or intimidation, a People's Procuratorate or a close relative of the victim may bring a complaint.

Article 99 "Not less than", "not more than" and "within" as used in this Law all include the given figure.

Article 100 Anyone who has been subjected to criminal punishment shall, before being recruited in the army or employed, report to the unit concerned about the fact; he may not conceal it.

Article 101 The General Provisions of this Law shall be applicable to other laws with provisions for criminal punishments, unless otherwise specifically provided for in those laws.

## Part Two Specific Provisions

### Chapter I Crimes of Endangering National Security

Article 102 Whoever colludes with a foreign State to endanger the sovereignty, territorial integrity and security of the People's Republic of China shall be sentenced to life imprisonment or fixed-term imprisonment of not less than 10 years.

Whoever commits the crime prescribed in the preceding paragraph in collusion with any organ, organization or individual outside the territory of China shall be punished according to the provisions in the preceding paragraph.

Article 103 Among those who organize, plot or carry out the scheme of splitting the State or undermining unity of the country, the ringleaders and the others who commit major crimes shall be sentenced to life imprisonment or fixed-term imprisonment of not less than 10 years; the ones who take an active part in it shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; and the other participants shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights.

Whoever incites others to split the State or undermine unity of the country shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights; the ringleaders and the ones who commit major crimes shall be sentenced to fixed-term imprisonment of not less than five years.

Article 104 Among those who organize, plot or carry out armed rebellion or armed riot, the ringleaders and the others who commit major crimes shall be sentenced to life imprisonment or fixed-term imprisonment of not less than 10 years; the ones who take an active part in it shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; and the other participants shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights.

Whoever instigates, coerces, lures or bribes State functionaries or members of the armed forces, the people's police or the people's militia to commit armed rebellion or armed riot shall be given a heavier punishment according to the provisions in the preceding paragraph.

Article 105 Among those who organize, plot or carry out the scheme of subverting the State power or overthrowing the socialist system, the ringleaders and the others who commit major crimes shall be sentenced to life imprisonment or fixed-term imprisonment of not less than 10 years; the ones who take an active part in it shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; and the other participants shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights.

Whoever incites others by spreading rumors or slanders or any other means to subvert the State power or overthrow the socialist system shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights; and the ringleaders and the others who commit major crimes shall be sentenced to fixed-term imprisonment of not less than five years.

Article 106 Whoever commits the crime as prescribed in Article 103, 104 or 105 of this Chapter in collusion with any organ, organization or individual outside the territory of China shall be given a heavier punishment according to the provisions stipulated in these Articles respectively.

Article 107 Where an organ, organization or individual inside or outside of the territory of China provides funds to any organization or individual within the territory of China to commit the crime as prescribed in Article 102, 103, 104 or 105, the person who is directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years.

Article 108 Whoever defects to the enemy and turns traitor shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; if the circumstances are serious or if he leads members of the armed forces, the people's police or the people's militia to defect to the enemy and turn traitor, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment.

Article 109 Any State functionary who, while discharging his official duties at home or abroad, leaves his post without permission and defects to another country, which endangers the security of the People's Republic of China, shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years.

Any State functionary who has State secrets commits the crime as prescribed in the preceding paragraph shall be given a heavier punishment according to the provisions in the preceding paragraph.

Article 110 Whoever endangers national security by committing any of the following acts of espionage shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment; if the circumstances are minor, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years:

- (1) joining an espionage organization or accepting a mission assigned by the organization or its agent; or
- (2) directing the enemy to any bombing or shelling target.

Article 111 Whoever steals, spies into, buys or unlawfully supplies State secrets or intelligence for an organ, organization or individual outside the territory of China shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment; if the circumstances are minor, he shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights.

Article 112 Whoever aids the enemy during wartime by providing him with weapons and equipment or military materials shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment; if the circumstances are minor, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Article 113 Whoever commits any of the crimes of endangering national security as mentioned above in this Chapter, with the exception of those provided for in Paragraph 2 of Article 103 and in Articles 105, 107 and 109, if the crime causes particularly grave harm to the State and the people or if the circumstances are especially serious, may be sentenced to death.

Whoever commits any of the crimes mentioned in this Chapter may concurrently be sentenced to confiscation of property.

## Chapter II Crimes of Endangering Public Security

Article 114 Whoever commits arson, breaches a dike, causes explosion, spreads poison or uses other dangerous means to sabotage any factory, mine, oilfield, harbour, river, water source,

warehouse, house, forest, farm, threshing ground, pasture, key pipeline, public building or any other public or private property, thereby endangering public security but causing no serious consequences, shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Article 115 Whoever commits arson, breaches a dike, causes explosion, spreads poison or inflicts serious injury or death on people or causes heavy losses of public or private property by other dangerous means, shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death.

Whoever negligently commits the crime mentioned in the preceding paragraph shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years; if the circumstances are minor, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Article 116 Whoever sabotages a train, motor vehicle, tram, ship or aircraft to such a dangerous extent as to overturn or destroy it, but with no serious consequences, shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Article 117 Whoever sabotages a railroad, bridge, tunnel, highway, airport, waterway, lighthouse or sign or conducts any other sabotaging activities to such a dangerous extent as to overturn or destroy it, but with no serious consequences, shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Article 118 Whoever sabotages any electric power or gas facility or any other inflammable or explosive equipment, thereby endangering public security, but causing no serious consequences, shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Article 119 Whoever sabotages any means of transport, transportation facility, electric power facility, gas facility, or inflammable or explosive equipment, thereby causing serious consequences, shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death.

Whoever negligently commits the crime mentioned in the preceding paragraph shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years; if the circumstances are minor, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Article 120 Whoever forms, leads or actively participates in a terrorist organization shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; other participants shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance.

Whoever, in addition to the crime mentioned in the preceding paragraph, commits other crimes of homicide, explosion or kidnap shall be punished in accordance with the provisions on combined punishment for several crimes.

Article 121 Whoever hijacks any aircraft by means of violence, coercion or by any other means shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment; any hijacker who causes serious injury to or death of any other person or serious damage to the aircraft shall be sentenced to death.

Article 122 Whoever hijacks a ship or motor vehicle by means of violence, coercion or by any other means shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years; if there are serious consequences, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment.

Article 123 Whoever uses violence against any person on board an aircraft and thereby endangers air safety, if there are no serious consequences, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if there are serious consequences, he shall be sentenced to fixed-term imprisonment of not less than five years.

Article 124 Whoever sabotages any broadcasting, television or public telecommunications facility, thereby endangering public security, shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years; if there are serious consequences, he shall be sentenced to fixed-term imprisonment of not less than seven years.

Whoever negligently commits the crime mentioned in the preceding paragraph shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years; if the circumstances are minor, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Article 125 Whoever illegally manufactures, trades in, transports, mails or stores any guns, ammunition or explosives shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death.

Whoever illegally trades in or transports nuclear materials shall be punished according to the provisions of the preceding paragraph.

Where a unit commits any of the crimes mentioned in the preceding two paragraphs, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished in accordance with the provisions of the first paragraph.

Article 126 If, in violation of the regulations governing control of guns, any enterprise that is designated or determined pursuant to law for manufacturing or selling guns commits any of the following acts, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the act shall be sentenced to fixed-term imprisonment of not more than five years; if the circumstances are serious, they shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years; if the circumstances are especially serious, they shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment:

(1) to manufacture or sell guns in excess of the quotas or at variance with the variety prescribed, for purposes of illegal sale;

(2) to manufacture guns without numbers or with duplicate or false numbers, for purposes of illegal sale; or

(3) to sell guns illegally, or sell guns in China that are manufactured for export.

Article 127 Whoever steals or forcibly seizes any guns, ammunition or explosives shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death.

Whoever robs any guns, ammunition or explosives or steals or forcibly seizes any guns, ammunition or explosives from State organs, members of the armed forces, the police or the people's militia shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death.

Article 128 Whoever, in violation of the regulations governing control of guns, illegally possesses or conceals any guns or ammunition shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Whoever is lawfully equipped with a gun for the discharge of official duties illegally leases or loans his gun shall be punished according to the provisions of the preceding paragraph.

If persons who are lawfully provided with guns illegally lease or loan such guns, thereby causing serious consequences, they shall be punished according to the provisions of the first paragraph.

Where a unit commits the crime mentioned in the second or third paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished according to the provisions of the first paragraph.

Article 129 If persons who are lawfully equipped with guns for the discharge of official duties lose their guns and fail to report about the matter immediately, thereby causing serious consequences, they shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Article 130 Whoever illegally enters a public place or gets on a public transportation vehicle with any gun, ammunition, controlled cutting tool or explosive, inflammable, radioactive, poisonous or corrosive materials and thereby endangers public security, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance.

Article 131 Any member of the crew on board an aircraft who operates in violation of rules or regulations and thereby causes a grave air accident, if there are serious consequences, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if an air

crash or death of another is caused, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 132 Any railway worker who operates in violation of rules or regulations and thereby causes a railway operational accident, if there are serious consequences, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if there are especially serious consequences, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 133 Whoever violates regulations governing traffic and transportation and thereby causes a serious accident, resulting in serious injuries or deaths or heavy losses of public or private property, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention. Whoever runs away from the spot after he has caused a traffic accident or is involved in other especially flagrant circumstances shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years; if his escape results in the death of another person, he shall be sentenced to fixed-term imprisonment of not less than seven years.

Article 134 If any employee of a factory, mine, tree farm, construction enterprise or any other enterprise or institution disobeys management or violates rules and regulations or, if anyone forces employees to work under hazardous conditions in violation of rules, thereby causing an accident involving heavy casualties or causing other serious consequences, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are especially flagrant, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 135 Where the facilities for operational safety of a factory, mine, tree farm, construction enterprise or any other enterprise or institution do not meet State requirements and no measures are taken to remove the hidden danger of accident after the warning given by the departments concerned or employees of the unit, so that an accident involving heavy casualties occurs or other serious consequences ensue, the person who is directly responsible for the accident shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are especially flagrant, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 136 Whoever violates the regulations on the control of explosive, inflammable, radioactive, poisonous or corrosive materials and thereby causes a serious accident during the production, storage, transportation or use of those materials, if there are serious consequences, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 137 Where any building, designing, construction or engineering supervision unit, in violation of State regulations, lowers the quality standard of a project and thereby causes a serious accident, the person who is directly responsible for the accident shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined; if the



consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined.

Article 138 If a person who is directly responsible knowingly fails to adopt measures against dangers in school buildings or in educational or teaching facilities or to make a timely report about the matter, so that an accident involving heavy casualties occurs, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 139 If a person who is directly responsible violates the regulations on fire prevention and control and refuses to take measures to set it right after being told by the organ for supervision over fire prevention and control to do so, if serious consequences ensue, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

### Chapter III Crimes of Disrupting the Order of the Socialist Market Economy

#### Section 1 Crimes of Producing and Marketing Fake or Substandard Commodities

Article 140 Any producer or seller who mixes impurities into or adulterates the products, or passes a fake product off as a genuine one, a defective product as a high-quality one, or a substandard product as a standard one, if the amount of earnings from sales is more than 50,000 yuan but less than 200,000 yuan, shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention and shall also, or shall only, be fined not less than half but not more than two times the amount of earnings from sales; if the amount of earnings from sales is more than 200,000 yuan but less than 500,000 yuan, he shall be sentenced to fixed-term imprisonment of not less than two years but not more than seven years and shall also be fined not less than half but not more than two times the amount of earnings from sales; if the amount of earnings from sales is more than 500,000 yuan but less than 2,000,000 yuan, he shall be sentenced to fixed-term imprisonment of not less than seven years and shall also be fined not less than half but not more than two times the amount of earnings from sales; if the amount of earnings from sales is more than 2,000,000 yuan, he shall be sentenced to fixed-term imprisonment of 15 years or life imprisonment, and shall also be fined not less than half but not more than two times the amount of earnings from sales or be sentenced to confiscation of property.

Article 141 Whoever produces or sells fake medicines that are harmful enough to seriously endanger human health shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined not less than half but not more than two times the amount of earnings from sales; if human health is seriously harmed, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined not less than half but not more than two times the amount of earnings from

sales; if death is caused to another person or especially serious harm is done to human health, he shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death, and shall also be fined not less than half but not more than two times the amount of earnings from sales or be sentenced to confiscation of property.

Fake medicines as mentioned in this Article refer to medicines or any non-medical substances that fall under the category of or are regarded as fake medicines under the Pharmaceutical Administration Law of the People's Republic of China.

Article 142 Whoever produces or sells medicines of inferior quality and thereby causes serious harm to human health shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined not less than half but not more than two times the amount of earnings from sales; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment, and shall also be fined not less than half but not more than two times the amount of earnings from sales or be sentenced to confiscation of pr property.

Medicines of inferior quality as mentioned in this Article refer to medicines that fall under the category of medicines of inferior quality under the Pharmaceutical Administration Law of the People's Republic of China.

Article 143 Whoever produces or sells food that is not up to hygiene standards, thus causing an accident of serious food poisoning or resulting in any serious disease caused by food-borne bacteria, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined not less than half but not more than two times the amount of earnings from sales; if serious harm is done to human health, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined not less than half but not more than two times the amount of earnings from sales; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than seven years or life imprisonment, and shall also be fined not less than half but not more than two times the amount of earnings from sales or be sentenced to confiscation of property.

Article 144 Whoever mixes the foods that he produces or sells with toxic or harmful non-food raw materials or knowingly sells such foods shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also, or shall only, be fined not less than half but not more than two times the amount of earnings from sales; if an accident of serious food poisoning or any serious disease caused by food-borne bacteria has resulted, thus seriously harming human health, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined not less than half but not more than two times the amount of earnings from sales; if death is caused to another person or especially serious harm is done to human health, he shall be punished according to the provisions in Article 141 of this Law.

Article 145 Whoever produces medical apparatus and instruments or medical hygiene materials that are not up to the national or trade standards for safeguarding human health or sells such things while clearly knowing the fact, thereby causing serious harm to human health, shall be sentenced to fixed-term imprisonment of not more than five years and shall also be fined not less

than half but not more than two times the amount of earnings from sales; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined not less than half but not more than two times the amount of earnings from sales; if the circumstances are especially flagrant, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment, and shall also be fined not less than half but not more than two times the amount of earnings from sales or be sentenced to confiscation of property.

Article 146 Whoever produces electrical appliances, pressure containers, inflammable or explosive products or any other products that are not up to the national or trade standards for safeguarding personal or property safety or knowingly sells such products, thereby causing serious consequences, shall be sentenced to fixed-term imprisonment of not more than five years and shall also be fined not less than half but not more than two times the amount of earnings from sales; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years and shall also be fined not less than half but not more than two times the amount of earnings from sales.

Article 147 Whoever produces fake pesticides, fake animal pharmaceuticals or fake chemical fertilizers or sells pesticides, animal pharmaceuticals, chemical fertilizers or seeds while clearly knowing that they are fake or no longer effective, or any producer or seller who passes substandard pesticides, animal pharmaceuticals, chemical fertilizers or seeds off as up-to-standard ones, thus causing relatively heavy losses to production, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined not less than half but not more than two times the amount of earnings from sales; if heavy losses are caused to production, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined not less than half but not more than two times the amount of earnings from sales; if especially heavy losses are caused to production, he shall be sentenced to fixed-term imprisonment of not less than seven years or life imprisonment and shall also be fined not less than half but not more than two times the amount of earnings from sales or be sentenced to confiscation of property.

Article 148 Whoever produces cosmetics that are not up to hygiene standards or knowingly sells such cosmetics, thus causing serious consequences, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined not less than half but not more than two times the amount of earnings from sales.

Article 149 Whoever produces or sells products listed in Articles 141 through 148 of this Section, if the case does not constitute the crime as mentioned in these Articles respectively but more than 50,000 yuan is earned from sales, shall be convicted and punished in accordance with the provisions of Article 140 of this Section.

Whoever produces or sells products listed in Articles 141 through 148 of this Section, if the case constitutes the crime as mentioned in these Articles respectively and also the crime mentioned in Article 140 of this Section, shall be convicted and punished in accordance with the provisions for a heavier punishment.

Article 150 Where a unit commits the crime as mentioned in Articles 141 through 148 of this Section, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished in accordance with the provisions of the Articles respectively.

## Section 2 Crimes of Smuggling

Article 151 Whoever smuggles weapons, ammunition, nuclear materials or counterfeit currency shall be sentenced to fixed-term imprisonment of not less than seven years and shall also be fined or sentenced to confiscation of property; if the circumstances are minor, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined .

Whoever smuggles cultural relics, gold, silver or other precious metals, the export of which is forbidden by the State, or precious and rare species of wildlife as well as the products thereof, the import and export of which are forbidden by the State, shall be sentenced to fixed-term imprisonment of not less than five years and shall also be fined; if the circumstances are minor, he shall be sentenced to fixed-term imprisonment of not more than five years and shall also be fined .

Whoever smuggles precious and rare species of plants and the products thereof, the import and export of which is forbidden by the State, shall be sentenced to fixed-term imprisonment of not more than five years and shall also, or shall only, be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years and shall also be fined .

Whoever commits the crime as mentioned in the first or the second paragraph, if the circumstances are especially serious, shall be sentenced to life imprisonment or death and also to confiscation of property.

Where a unit commits the crime as mentioned in this Article, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished in accordance with the provisions of the paragraphs in this Article respectively.

Article 152 Whoever, for the purpose of making profits or dissemination, smuggles pornographic movies, videotapes, magnetic tapes, pictures, books or periodicals or other pornographic materials shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined or be sentenced to confiscation of property; if the circumstances are minor, he shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance, and shall also be fined .

Where a unit commits the crime as mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished in accordance with the provisions of the preceding paragraph.

Article 153 Whoever smuggles goods or articles not specified in Articles 151, 152 and 347 of this Law shall, in the light of the seriousness of the circumstances, be punished in accordance with the following provisions respectively:

(1) If he smuggles goods or articles and evades or dodges payable duties to the amount of more than 500,000 yuan, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined not less than one time but not more than five times the amount of payable duties evaded or dodged or be sentenced to confiscation of property; if the circumstances are especially serious, he shall be punished according to the provisions in the fourth paragraph of Article 151 of this Law.

(2) If he smuggles goods or articles and evades or dodges payable duties to the amount of more than 150,000 yuan but less than 500,000 yuan, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined not less than one time but not more than five times the amount of payable duties evaded or dodged; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined not less than one time but not more than five times the amount of payable duties evaded or dodged or be sentenced to confiscation of property.

(3) If he smuggles goods or articles and evades or dodges payable duties to the amount of more than 50,000 yuan but less than 150,000 yuan, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also be fined not less than one time but not more than five times the amount of payable duties evaded or dodged.

Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are serious, they shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; if the circumstances are especially serious, they shall be sentenced to fixed-term imprisonment of not less than 10 years.

Whoever smuggles goods or articles many times, and goes unpunished shall be punished on the basis of the cumulative amount of the payable duties he evades or dodges in smuggling goods or articles.

Article 154 Whoever commits any of the following acts of smuggling that constitutes a crime according to the provisions in this Section shall be convicted and punished in accordance with the provisions of Article 153 of this Law:

(1) without permission of the Customs and without having paid the overdue payable duties, selling for profits within the territory of the People's Republic of China authorized imported bonded goods such as materials supplied by foreign clients for processing, parts supplied by them for assembly, or raw or processed materials, parts, finished products or equipment for compensation trade; or

(2) without permission of the Customs and without having paid the overdue payable duties, selling for profits within the territory of the People's Republic of China imported goods and articles specially designated for reduction of or exemption from duties.

Article 155 Whoever commits any of the following acts shall be deemed to have committed the crime of smuggling and shall be punished in accordance with the relevant provisions of this Section:

(1) directly and illegally purchasing from smugglers articles, the import of which is forbidden by the State, or directly and illegally purchasing from smugglers other smuggled goods and articles in and in relatively large quantities or values;

(2) transporting, purchasing or selling in inland seas or territorial waters articles the import and export of which are forbidden by the State, or transporting, purchasing or selling, without legal certificates and in relatively large quantities or values, goods or articles the import and export of which are restricted by the State; or

(3) transporting solid waste from outside China into the territory of China through evading supervision and control by the Customs.

Article 156 Whoever conspires with criminals of smuggling and provides them with loans, funds, account numbers, invoices or certificates or with such conveniences as transportation, storage and mailing shall be deemed an accomplice in the crime of smuggling and punished as such.

Article 157 Whoever shields smuggling with arms shall be given a heavier punishment in accordance with the provisions in the first or fourth paragraph of Article 151 of this Law.

Whoever, by means of violence or threat, resists the seizure of smuggled goods shall be punished for the crime of smuggling and the crime of preventing State functionaries from performing their duties according to law, as stipulated in Article 277 of this Law, and in accordance with the provisions regarding the combined punishment for several crimes.

### Section 3 Crimes of Disrupting the Order of Administration of Companies and Enterprises

Article 158 Whoever, when applying for company registration, obtains the registration by deceiving the competent company registration authority through falsely declaring the capital to be registered with falsified certificates or by other deceptive means shall, if the amount of the falsely registered capital is huge, and the consequences are serious or if there are other serious circumstances, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined not less than one percent but not more than five percent of the capital falsely declared for registration.

Where a unit commits the crime as mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Article 159 Any sponsor or shareholder of a company who, in violation of the provisions of the Company Law, makes a false capital contribution by failing to pay the promised cash or tangible assets or to transfer property rights, or surreptitiously withdraws the contributed capital after the incorporation of the company shall, if the amount involved is huge, and the consequences are serious, or if there are other serious circumstances, be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also, or shall only, be fined not less than two percent but not more than 10 percent of the false capital contribution or of the amount of the capital contribution surreptitiously withdrawn.

Where a unit commits the crime as mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Article 160 Whoever issues shares or company or enterprise bonds by concealing important facts or falsifying major information in the prospectus on share offer, subscription forms or measures for offer of company or enterprise bonds shall, if the amount involved is huge, and the consequences are serious, or if there are other serious circumstances, be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also, or shall only, be fined not less than one percent but not more than five percent of the funds illegally raised.

Where a unit commits the crime as mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Article 161 Where a company submits to shareholders and the general public false financial and accounting reports, or reports concealing important facts, thus causing serious harm to the interests of shareholders or others, the persons who are directly in charge and the other persons who are directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined not less than 20,000 yuan but not more than 200,000 yuan.

Article 162 Where, in the process of its liquidation, a company or enterprise conceals its assets, records false information in its balance sheet or inventory of assets, or distributes the company or enterprise assets prior to full payment of its debts, thus causing serious harm to the interests of the creditors or others, the persons who are directly in charge and the other persons who are directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also, or shall only, be fined not less than 20,000 yuan but not more than 200,000 yuan.

Article 163 Where an employee of a company or enterprise who, taking advantage of his position, demands money or property from another person or illegally accepts another person's money or property in return for the benefits he seeks for such person, if the amount involved is relatively large, he shall be sentenced to fixed-term imprisonment of not more than five years or criminal

detention; if the amount is huge, he shall be sentenced to fixed-term imprisonment of not less than five years and may also be sentenced to confiscation of property.

Any employee of a company or enterprise who, violating State regulations in economic activities, accepts rebates or service charges of various descriptions and takes them into his own possession shall be punished in accordance with the provisions in the preceding paragraph.

Any employee of a State-owned company or enterprise who, being engaged in public service or who is assigned by a State-owned company or enterprises to engage in public service in a company or enterprise that is not owned by the State, commits any of the acts mentioned in the preceding two paragraphs shall be convicted and punished according to the provisions in Articles 385 and 386 of this Law.

Article 164 Whoever, for the purpose of seeking illegitimate benefits, gives money or property to any employee of a company or enterprise, if the amount involved is relatively large, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the amount involved is huge, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined .

Where a unit commits the crime as mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished according to the provisions in the preceding paragraph.

Any briber who confesses the bribery voluntarily prior to prosecution may be given a mitigated punishment or be exempted from punishment.

Article 165 Any director or manager of a State-owned company or enterprise who, taking advantage of his office, operates for himself or for another the same business as that of the company or enterprise in which he holds the office and obtains illegal interests, if the amount involved is huge, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the amount is especially huge, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.

Article 166 Any employee of a State-owned company, enterprise or institution who, taking advantage of his office, commits any of the following acts and thus causes heavy losses to the interests of the State shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if especially heavy losses are caused to the interests of the State, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined :

(1) turning management of the profitable business of his unit over to his relatives or friends;

(2) purchasing commodities from the unit managed by his relatives or friends at a price obviously higher than the market price, or selling commodities to such unit at a price obviously lower than the market price; or



(3) purchasing from the unit managed by his relatives or friends commodities that are not up to standards.

Article 167 If a person who is directly in charge of a State-owned company, enterprise or institution, when signing or fulfilling a contract, is defrauded due to serious neglect of responsibility and thus causes heavy losses to the interests of the State, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if especially heavy losses are caused to the interests of the State, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 168 If a person who is directly in charge of a State-owned company or enterprise, practises irregularities for selfish ends and causes bankruptcy or heavy losses to the said company or enterprise, thus resulting in heavy losses of the interests of the State, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Article 169 If a person who is directly in charge of a State-owned company or enterprise or the competent department at a higher level practises irregularities for selfish ends by converting State-owned assets to shares at a low price or selling them at a low price and thus causes heavy losses to the interests of the State, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if especially heavy losses are caused to the interests of the State, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

#### Section 4 Crimes of Disrupting the Order of Financial Administration

Article 170 Whoever counterfeits currencies shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan. Whoever is found to be in any of the following situations shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan or be sentenced to confiscation of property:

- (1) being a ringleader of a gang engaged in counterfeiting currencies;
- (2) having counterfeited currencies in especially huge, amounts; or
- (3) being involved in other especially serious circumstances.

Article 171 Whoever sells or buys counterfeit currencies or knowingly transports such currencies shall, if the amount involved is relatively large, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan; if the amount involved is huge, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan; if the amount involved is especially huge, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan or be sentenced to confiscation of property.

Any employee of a bank or of any other banking institution who buys counterfeit currencies or, taking advantage of his position, exchanges such currencies for genuine ones shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan; if the amount involved is huge, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan or be sentenced to confiscation of property; if the circumstances are minor, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined not less than 10,000 yuan but not more than 100,000 yuan.

Whoever counterfeits currencies and also sells or transports counterfeit currencies shall be convicted and given a heavier punishment according to the provisions in Article 170 of this Law.

Article 172 Whoever knowingly holds or uses counterfeit currencies shall, if the amount involved is relatively large, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined not less than 10,000 yuan but not more than 100,000 yuan; if the amount involved is huge, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan ; if the amount involved is especially huge, he shall be sentenced to fixed-term imprisonment of not less than 10 years and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan or be sentenced to confiscation of property.

Article 173 Whoever alters currencies shall, if the amount involved is relatively large, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined not less than 10,000 yuan but not more than 100,000 yuan; if the amount involved is huge, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan.

Article 174 Whoever establishes a commercial bank or any other banking institution without the approval of the People's Bank of China shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined not less than 20,000 yuan but not more than 200,000 yuan; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan.

Whoever forges, alters or transfers the permit for operation of a commercial bank or any other banking institution shall be punished in accordance with the provisions of the preceding paragraph.

Where a unit commits any of the crimes mentioned in the preceding two paragraphs, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished in accordance with the provisions of the first paragraph.

Article 175 Whoever, for the purpose of making profits through transferring loans, fraudulently obtains credit funds from a banking institution and transfers the funds to another at usury shall, if the amount of illegal gains is relatively large, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also be fined not less than one time but not more than five times the illegal gains; if the amount involved is huge, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined not less than one time but not more than five times the illegal gains.

Where a unit commits the crime as mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Article 176 Whoever illegally takes in deposits from the general public or does so in disguised form, thus disrupting the financial order, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined not less than 20,000 yuan but not more than 200,000 yuan; if the amount involved is huge, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan.

Where a unit commits the crime as mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished according to the provisions in the preceding paragraph.

Article 177 Whoever commits any of the following acts of forging or altering financial bills shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also, or shall only, be fined not less than 20,000 yuan but not more than 200,000 yuan; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan or be sentenced to confiscation of property:

- (1) forging or altering bills of exchange, promissory notes or cheques;
- (2) forging or altering settlement certificates of a bank such as certificates of entrustment with the receipt of payment, certificates of remittance and deposit receipts;
- (3) forging or altering letters of credit or their attached bills and documents; or
- (4) forging credit cards.

Where a unit commits any of the crimes mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished according to the provisions in the preceding paragraph.

Article 178 Whoever forges or alters treasury certificates or any other negotiable securities issued by the State shall, if the amount involved is relatively large, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined not less than 20,000 yuan but not more than 200,000 yuan; if the amount involved is huge, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan; if the amount involved is especially huge, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan or be sentenced to confiscation of property.

Whoever forges or alters stocks or corporate or enterprise bonds shall, if the amount involved is relatively large, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined not less than 10,000 yuan but not more than 100,000 yuan; if the amount involved is huge, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan.

Any unit that commits any of the crimes mentioned in the preceding two paragraphs, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished according to the provisions in the preceding two paragraphs respectively.

Article 179 Whoever issues stocks or corporate or enterprise bonds without approval of the competent departments of the State shall, if the amount involved is huge, and the consequences are serious, or if there are other serious circumstances, be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also, or shall only, be fined not less than one percent but not more five percent of the funds illegally raised.

Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Article 180 Any insider who possesses inside information about any stock exchange transactions or anyone who illegally obtains such information, prior to the publication of the information that concerns stock issuing or exchange or that has a vital bearing on the stock price, buys or sells the very stock or divulges the very information shall, if the circumstances are serious, be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also, or shall only, be fined not less than one time but not more than five times the illegal gains; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined not less than one time but not more than five times the illegal gains.

Where a unit commits the crime as mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the

crime shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

The range of inside information shall be determined in accordance with the provisions of laws or administrative rules and regulations.

The range of insiders shall be determined in accordance with the provisions of laws or administrative rules and regulations.

Article 181 Whoever fabricates and spreads false information to adversely affect stock exchange and disrupt the stock exchange market shall, if the consequences are serious, be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also, or shall only, be fined not less than 10,000 yuan but not more than 100,000 yuan.

Any employee of a stock exchange or securities company or any member of a securities association or department for securities administration who deliberately provides false information or forges, alters or destroys transaction records in order to cajole investors into buying or selling securities and thus serious consequences have resulted, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also, or shall only, be fined not less than 10,000 yuan but not more than 100,000 yuan; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan.

Where a unit commits any of the crimes mentioned in the preceding two paragraphs, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Article 182 Whoever commits any of the following acts by rigging stock prices in order to obtain illegitimate profits or transfer risks shall, if the circumstances are serious, be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also, or shall only, be fined not less than one time but not more than five times the illegal gains:

- (1) rigging stock prices by working alone or plotting with another in concluding transactions jointly or continuously through a mustering superiority in the holding of funds or shares or in the use of information;
- (2) affecting stock prices or the volume of stock transactions by colluding with another and carrying out stock exchange between themselves upon a time, at a price and in a manner previously agreed, or buying or selling between themselves the securities they do not hold;
- (3) affecting stock prices or the volume of stock transactions by taking himself as the counterpart of transaction and trading in stocks with himself without transferring ownership of the stock; or
- (4) rigging stock prices by any other means.

Where a unit commits any of the crimes mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for

the crime shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Article 183 Any employee of an insurance company who, taking advantage of his position, deliberately fabricates the occurrence of an insured accident and falsely settles a fictitious claim, thereby swindling the insured amount of money out of the company and taking it into his own possession, shall be convicted and punished according to the provisions in Article 271 of this Law.

If an employee of a State-owned insurance company or any person who is assigned by a State-owned insurance company to an insurance company that is not owned by the State to engage in public service commits the act prescribed in the preceding paragraph, he shall be convicted and punished according to the provisions in Articles 382 and 383 of this Law.

Article 184 Any employee of a bank or of any other banking institution who in financial activities demands money or property from another person or illegally accepts money or property from another person in return for the benefits secured for such person or, in violation of State regulations, accepts rebates or service charges of various descriptions and takes them into his own possession shall be convicted and punished according to the provisions in Article 163 of this Law.

Any employee of a State-owned banking institution or any person assigned by a State-owned banking institution to a banking institution that is not owned by the State to engage in public service who commits the act mentioned in the preceding paragraph shall be convicted and punished according to the provisions in Articles 385 and 386 of this Law.

Article 185 Any employee of a bank or of any other banking institution who, taking advantage of his position, misappropriates money belonging to the bank or any client shall be convicted and punished according to the provisions in Article 272 of this Law.

If any employee of a State-owned banking institution or any person who is assigned by a State-owned banking institution to a banking institution that is not owned by the State to engage in public service commits the act mentioned in the preceding paragraph, he shall be convicted and punished according to the provisions in Article 384 of this Law.

Article 186 Any employee of a bank or of any other banking institution who, against laws or administrative rules and regulations, grants fiduciary loans or guaranteed loans to his connections on conditions that are more preferential than those for granting the same type of loans to other borrowers, thus causing relatively heavy losses, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined not less than 10,000 yuan but not more than 100,000 yuan; if heavy losses are caused, he shall be sentenced to fixed-term imprisonment of not less than five years and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan.

Any employee of a bank or of any other banking institution who, against laws or administrative rules and regulations, grants loans to persons other than his connections, thus causing heavy losses, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined not less than 10,000 yuan but not more than 100,000 yuan; if especially

heavy losses are caused, he shall be sentenced to fixed-term imprisonment of not less than five years and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan.

Where a unit commits any of the crimes mentioned in the preceding two paragraphs, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished according to the provisions in the preceding two paragraphs respectively.

The range of connections shall be determined in accordance with the provisions in the Law of the People's Republic of China on Commercial Banks and the relevant regulations on banking.

Article 187 Any employee of a bank or of any other banking institution who, for the purpose of making profits, illegally lends the funds he absorbed from the clients instead of entering them into the account book, or uses the funds as loans, thus causing heavy losses, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan; if especially heavy losses are caused, he shall be sentenced to fixed-term imprisonment of not less than five years and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan.

Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished according to the provisions in the preceding paragraph.

Article 188 Any employee of a bank or of any other banking institution who, against regulations, issues letters of credit or other letters of guaranty, negotiable instruments, deposit certificates or certificates of financial standing, thus causing relatively heavy losses, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if heavy losses are caused, he shall be sentenced to fixed-term imprisonment of not less than five years.

Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished according to the provisions in the preceding paragraph.

Article 189 Any employee of a bank or of any other banking institution who, in dealing with negotiable instruments, accepts, pays or guarantees a negotiable instrument which is at variance with the provisions in the Law on Negotiable Instruments, thus causing heavy losses, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if especially heavy losses are caused, he shall be sentenced to fixed-term imprisonment of not less than five years.

Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished according to the provisions in the preceding paragraph.

Article 190 Any State-owned company, enterprise or any other State-owned unit that, against State regulations, deposits foreign exchange outside China or illegally transfers foreign exchange inside China out to any other countries shall, if the circumstances are serious, be fined, and the persons

who are directly in charge and the other persons who are directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Article 191 Whoever, while clearly knowing that the funds are proceeds illegally obtained from drug-related crimes or from crimes committed by mafias or smugglers and gains derived therefrom, commits any of the following acts in order to cover up or conceal the source or nature of the funds shall, in addition to being confiscated of the said proceeds and gains, be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also, or shall only, be fined not less than five percent but not more than 20 percent of the amount of money laundried; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five but not more than 10 years and shall also be fined not less than five percent but not more than 20 percent of the amount of money laundried:

- (1) providing fund accounts;
- (2) helping exchange property into cash or any financial negotiable instruments;
- (3) helping transfer capital through transferring accounts or any other form of settlement;
- (4) helping remit funds to any other country; or
- (5) covering up or concealing by any other means the nature or source of the illegally obtained proceeds and the gains derived therefrom.

Where a unit commits any of the crimes mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

## Section 5 Crimes of Financial Fraud

Article 192 Whoever, for the purpose of illegal possession, unlawfully raises funds by means of fraud shall, if the amount involved is relatively large, be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan; if the amount involved is huge, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan; if the amount involved is especially huge, or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan or be sentenced to confiscation of property.

Article 193 Whoever commits any of the following acts to defraud a bank or any other financial institution of loans for the purpose of illegal possession shall, if the amount involved is relatively large, be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan; if the amount involved is huge, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined not less



than 50,000 yuan but not more than 500,000 yuan; if the amount involved is especially huge, or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan or be sentenced to confiscation of property:

- (1) inventing false reasons for obtaining funds, projects, etc. from abroad;
- (2) using a false economic contract;
- (3) using a false supporting document;
- (4) using a false property right certificate as guaranty or repeatedly using the same mortgaged property as guaranty in excess of its value; or
- (5) defrauding loans by any other means.

Article 194 Whoever commits fraud by means of financial bills in any of the following ways shall, if the amount involved is relatively large, be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan; if the amount involved is huge, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan; if the amount involved is especially huge, or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan or be sentenced to confiscation of property:

- (1) knowingly using forged or altered bills of exchange, promissory notes or cheques;
- (2) knowingly using invalidated bills of exchange, promissory notes or cheques;
- (3) illegally using another's bills of exchange, promissory notes or cheques;
- (4) signing and issuing a rubber cheque or a cheque, on which the seal is not in conformity with the reserved specimen seal, in order to defraud money or property; or
- (5) signing or issuing bills of exchange or promissory notes without funds as a guaranty, in the capacity of a drawer, falsely specifying the particulars thereon at the time of issue, in order to defraud money or property.

Whoever uses forged or altered settlement certificates of a bank such as certificates of entrustment with the receipt of payment, certificates of remittance and deposit receipts shall be punished in accordance with the provisions in the preceding paragraph.

Article 195 Whoever commits fraud by means of a letter of credit in any of the following ways shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan; if the amount involved is huge, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined not less

than 50,000 yuan but not more than 500,000 yuan; if the amount involved is especially huge, or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan or be sentenced to confiscation of property:

- (1) using a forged or altered letter of credit or any of its attached bills or documents;
- (2) using an invalidated letter of credit;
- (3) fraudulently obtaining a letter of credit; or
- (4) in any other ways.

Article 196 Whoever commits fraud by means of a credit card in any of the following ways shall, if the amount involved is relatively large, be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan; if the amount involved is huge, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan; if the amount involved is especially huge, or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan or be sentenced to confiscation of property:

- (1) using a forged credit card;
- (2) using an invalidated credit card;
- (3) illegally using another's credit card; or
- (4) overdrawing with ill intentions.

Overdrawing with ill intentions as mentioned in the preceding paragraph means that a credit card holder who, for the purpose of illegal possession, overdraws beyond the norm set or beyond the time limit and refuses to repay the overdrawn amount after the bank that issues the card urges him to do so.

Whoever steals a credit card and uses it shall be convicted and punished in accordance with the provisions in Article 264 of this Law.

Article 197 Whoever commits fraud by using forged or altered treasury certificates or any other securities issued by the State shall, if the amount involved is relatively large, be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan; if the amount involved is huge, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan; if the amount involved is especially huge, or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life

imprisonment and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan or be sentenced to confiscation of property.

Article 198 Any of the following persons who commit insurance fraud in any of the following ways shall, if the amount involved is relatively large, be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined not less than 10,000 yuan but not more than 100,000 yuan; if the amount involved is huge, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan; if the amount involved is especially huge, or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan or be sentenced to confiscation of property:

- (1) an applicant defrauds insurance money by deliberately falsifying the subject matter of the insurance;
- (2) an applicant, an insured or a beneficiary defrauds insurance money by cooking up the cause of an insured accident or overstates the extent of loss;
- (3) an applicant, an insured or a beneficiary defrauds insurance money by inventing stories of an insured accident that does not occur;
- (4) an applicant or an insured defrauds insurance money by deliberately causing the occurrence of an insured accident that leads to property damage; or
- (5) an applicant or a beneficiary defrauds insurance money by deliberately causing the death, disability or illness of the insured.

Whoever commits the act listed in sub-paragraph (4) or (5) of the preceding paragraph, which also constitutes another crime, shall be punished in accordance with the provisions on combined punishment for several crimes.

Where a unit commits the crime mentioned in the first paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the amount involved is huge, or if there are other serious circumstances, they shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years; if the amount involved is especially huge, or if there are other especially serious circumstances, they shall be sentenced to fixed-term imprisonment of not less than 10 years.

Any expert witness, witness or property assessor of an insured accident who deliberately provides false supporting documents, thus creating the conditions for another to practise defraudation, shall be deemed an accomplice in insurance fraud and punished as such.

Article 199 Whoever commits the crime mentioned in Article 192, 194 or 195 of this Section shall, if the amount involved is especially huge, and especially heavy losses are caused to the interests of

the State and the people, be sentenced to life imprisonment or death and also to confiscation of property.

Article 200 Where a unit commits the crime mentioned in Article 192, 194 or 195 of this Section, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the amount involved is huge, or if there are other serious circumstances, they shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years; if the amount involved is especially huge, or if there are other especially serious circumstances, they shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment.

#### Section 6 Crimes of Jeopardizing Administration of Tax Collection

Article 201 Any taxpayer who fails to pay or underpays the amount of taxes payable by means of forging, altering, concealing or destroying without authorization account books or vouchers for the accounts, or overstating expenses or omitting or understating incomes in account books, or refusing to file his tax returns after the tax authorities have notified him to do so or filing false tax returns shall, if the amount of tax evaded accounts for over 10 percent but under 30 percent of the total of taxes payable and over 10,000 yuan but under 100,000 yuan, or if he commits tax evasion again after having been twice subjected to administrative sanctions by the tax authorities for tax evasion, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also be fined not less than one time but not more than five times the amount of tax evaded; if the amount of tax evaded accounts for over 30 percent of the total of taxes payable or is over 100,000 yuan, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined not less than one time but not more than five times the amount of tax evaded.

Where a withholding agent who, by using the means mentioned in the preceding paragraph, fails to pay or underpays the taxes which he has withheld or collected shall, if the amount accounts for over 10 percent of the total of taxes payable or is over 10,000 yuan, be punished in accordance with the provisions in the preceding paragraph.

Whoever repeatedly commits the acts mentioned in the preceding two paragraphs and goes unpunished shall be punished on the basis of the cumulative total.

Article 202 Whoever refuses to pay taxes by means of violence or threat shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also be fined not less than one time but not more than five times the amount he refuses to pay; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined not less than one time but not more than five times the amount he refuses to pay.

Article 203 Any taxpayer who does not pay the taxes due and adopts the means of transferring or concealing his property so that the tax authorities cannot pursue the amount of taxes in arrears shall, if the amount involved is over 10,000 yuan but under 100,000 yuan, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only,

be fined not less than one time but not more than five times the amount of taxes in arrears; if the amount involved is over 100,000 yuan, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined not less than one time but not more than five times the amount of taxes in arrears.

Article 204 Whoever, by filing false export declaration or by any other deceptive means, obtains from the State a tax refund for exports shall, if the amount involved is relatively large, be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined not less than one time but not more than five times the amount defrauded; if the amount involved is huge, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined not less than one time but not more than five times the amount defrauded; if the amount involved is especially huge, or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined not less than one time but not more than five times the amount defrauded or be sentenced to confiscation of property.

Any taxpayer who, after having paid the taxes, adopts the deceptive means mentioned in the preceding paragraph to obtain a tax refund shall be convicted and punished according to the provisions in Article 201 of this Law, and for the defrauded part that exceeds what he has paid, he shall be punished according to the provisions in the preceding paragraph.

Article 205 Whoever falsely makes out special invoices for value-added tax or any other invoices to defraud a tax refund for exports or to offset tax money shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan; if the amount of money involved is relatively large or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan; if the amount of money involved is huge, or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan or be sentenced to confiscation of property.

Whoever commits the act mentioned in the preceding paragraph to defraud tax money of the State shall, if the amount involved is especially huge, and the circumstances are especially serious, thus causing especially heavy losses to the interests of the State, shall be sentenced to life imprisonment or death and also to confiscation of property.

Where a unit commits the crime mentioned in this Article, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the amount involved is relatively large or if there are other serious circumstances, they shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; if the amount involved is huge, or if there are other especially serious circumstances, they shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment.

Falsely making out special invoices for value-added tax or any other invoices to defraud a tax refund for exports or to offset tax money refers to any act of falsely making out the said invoices for another, for oneself, or asking another to do so for oneself, or recommending another to do so.

Article 206 Whoever forges or sells forged special invoices for value-added tax shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan; if the number involved is relatively large or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan; if the number involved is huge, or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan or be sentenced to confiscation of property.

Whoever forges or sells forged special invoices for value-added tax shall, if the number involved is especially huge, and the circumstances are especially serious so that economic order is seriously disrupted, be sentenced to life imprisonment or death and also to confiscation of property.

Where a unit commits the crime mentioned in this Article, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance; if the number involved is relatively large or if there are other serious circumstances, they shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; if the number involved is huge, or if there are other especially serious circumstances, they shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment.

Article 207 Whoever illegally sells special invoices for value-added tax shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan; if the number involved is relatively large, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan; if the number involved is huge, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan or be sentenced to confiscation of property.

Article 208 Whoever unlawfully purchases special invoices for value-added tax or purchases forged special invoices for value-added tax shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also, or shall only, be fined not less than 20,000 yuan but not more than 200,000 yuan.

Whoever, in addition to unlawfully purchasing special invoices for value-added tax or purchasing forged special invoices for value-added tax, falsely makes out such invoices or sells them shall be convicted and punished according to the provisions of Article 205, 206 or 207 of this Law respectively.

Article 209 Whoever forges or makes without authorization any other invoices, which can be used to defraud a tax refund for exports or to offset tax money, or sells such invoices shall be sentenced

to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined not less than 20,000 yuan but not more than 200,000 yuan; if the number involved is large, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan; if the number involved is especially huge, he shall be sentenced to fixed-term imprisonment of not less than seven years and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan or be sentenced to confiscation of property.

Whoever forges or makes without authorization invoices other than the ones specified in the preceding paragraph or sells such invoices shall be sentenced to fixed-term imprisonment of not more than two years, criminal detention or public surveillance and shall also, or shall only, be fined not less than 10,000 yuan but not more than 50,000 yuan; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than two years but not more than seven years and shall also be fined not less than 50,000 yuan but not more than 500,000 yuan.

Whoever illegally sells any other invoices which can be used to defraud a tax refund for exports or to offset tax money shall be punished according to the provisions in the first paragraph.

Whoever illegally sells invoices other than the ones specified in the third paragraph shall be punished according to the provisions in the second paragraph.

Article 210 Whoever steals special invoices for value-added tax or any other invoices which can be used to defraud a tax refund for exports or to offset tax money shall be convicted and punished in accordance with the provisions in Article 264 of this Law.

Whoever fraudulently obtains special invoices for value-added tax or other invoices which can be used to defraud a tax refund for exports or to offset tax money shall be convicted and punished in accordance with the provisions in Article 266 of this Law.

Article 211 Where a unit commits the crime mentioned in Article 201, 203, 204, 207, 208 or 209 of this Section, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished in accordance with the provisions of the Articles respectively.

Article 212 Whoever commits the crime mentioned in Article 201, 202, 203, 204 or 205 and is fined or sentenced to confiscation of property shall be so punished after the tax authorities have recovered the taxes evaded and the defrauded tax refund for exports.

## Section 7 Crimes of Infringing on Intellectual Property Rights

Article 213 Whoever, without permission from the owner of a registered trademark, uses a trademark which is identical with the registered trademark on the same kind of commodities shall, if the circumstances are serious, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined .

Article 214 Whoever knowingly sells commodities bearing counterfeit registered trademarks shall, if the amount of sales is relatively large, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the amount of sales is huge, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined .

Article 215 Whoever forges or without authorization of another makes representations of the person's registered trademarks or sells such representations shall, if the circumstances are serious, be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined .

Article 216 Whoever counterfeits the patent of another shall, if the circumstances are serious, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined.

Article 217 Whoever, for the purpose of making profits, commits any of the following acts of infringement on copyright shall, if the amount of illegal gains is relatively large, or if there are other serious circumstances, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the amount of illegal gains is huge or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined :

- (1) reproducing and distributing a written work, musical work, motion picture, television programme or other visual works, computer software or other works without permission of the copyright owner;
- (2) publishing a book of which the exclusive right of publication is enjoyed by another person;
- (3) reproducing and distributing an audio or video recording produced by another person without permission of the producer; or
- (4) producing or selling a work of fine art with forged signature of another painter.

Article 218 Whoever, for the purpose of making profits, knowingly sells works reproduced by infringing on the copyright of the owners as mentioned in Article 217 of this Law shall, if the amount of illegal gains is huge,, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined.

Article 219 Whoever commits any of the following acts of infringing on business secrets and thus causes heavy losses to the obligee shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined :

- (1) obtaining an obligee's business secrets by stealing, luring , coercion or any other illegitimate means;



(2) disclosing, using or allowing another to use the business secrets obtained from the obligee by the means mentioned in the preceding paragraph; or

(3) in violation of the agreement on or against the obligee's demand for keeping business secrets, disclosing, using or allowing another person to use the business secrets he has.

Whoever obtains, uses or discloses another's business secrets, which he clearly knows or ought to know falls under the categories of the acts listed in the preceding paragraph, shall be deemed an offender who infringes on business secrets.

"Business secrets" as mentioned in this Article refers to technology information or business information which is unknown to the public, can bring about economic benefits to the obligee, is of practical use and with regard to which the obligee has adopted secret-keeping measures.

"Obligee" as mentioned in this Article refers to the owner of business secrets and the person who is permitted by the owner to use the business secrets.

Article 220 Where a unit commits any of the crimes mentioned in the Articles from 213 through 219 of this Section, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished in accordance with the provisions of the Articles respectively.

#### Section 8 Crimes of Disrupting Market Order

Article 221 Whoever fabricates stories and spreads them to damage another person's business credit or commodity reputation, if heavy losses are caused to the person, or if there are other serious circumstances, shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention and shall also, or shall only, be fined.

Article 222 Any advertiser, advertisement agent or advertisement publisher who, in violation of State regulations, takes advantage of advertisement to make false publicity of commodities or services, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention and shall also, or shall only, be fined.

Article 223 Bidders who act in collusion with each other in offering bidding prices and thus jeopardize the interests of bid-inviter or of other bidders, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined.

If a bidder and bid-inviter act in collusion with each other in bidding and thus jeopardize the lawful interests of the State, the collective or citizens, they shall be punished according to the provisions of the preceding paragraph.

Article 224 Whoever, during the course of signing or fulfilling a contract, commits any of the following acts to defraud money or property of the other party for the purpose of illegal possession, if the amount involved is relatively large, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the amount involved is huge, or if there are other serious circumstances, he shall be

sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined; if the amount involved is especially huge or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined or be sentenced to confiscation of property:

- (1) signing a contract in the name of a fictitious unit or in the name of another person;
- (2) offering as guaranty forged, altered or invalidated negotiable instruments or any other false property right certificates;
- (3) while having no ability to fulfil a contract, cajoling the other party into continuing to sign and fulfil a contract by way of fulfilling a contract that involves a small amount of money or fulfilling part of the contract;
- (4) going into hiding after receiving the other party's goods, payment for goods, cash paid in advance or property for guaranty; or
- (5) any other acts.

Article 225 Whoever, in violation of State regulations, commits any of the following illegal acts in business operation and thus disrupts market order, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also, or shall only, be fined not less than one time but not more than five times the amount of illegal gains; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years and shall also be fined not less than one time but not more than five times the amount of illegal gains or be sentenced to confiscation of property:

- (1) without permission, dealing in goods that are designated by laws or administrative rules and regulations as goods to be dealt in or sold in a monopoly way or other goods that are restricted in trading;
- (2) buying or selling import or export licenses, import or export certificates of origin or other business licenses or approval papers required by laws or administrative rules and regulations; or
- (3) other illegal operations that seriously disrupt market order.

Article 226 Whoever buys or sells commodities by violence or intimidation, or compels another person to provide or receive a service, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined.

Article 227 Whoever counterfeits or scalps any counterfeit train or ship tickets, stamps or any other negotiable tickets, if the amount involved is relatively large, shall be sentenced to fixed-term imprisonment of not more than two years, criminal detention or public surveillance and shall also, or shall only, be fined not less than one time but not more than five times the value of the tickets; if the amount involved is huge, he shall be sentenced to fixed-term imprisonment of not less than two years but not more than seven years and shall also be fined not less than one time but not more than five times the value of the tickets.

Whoever scalps train or ship tickets, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance, and shall also, or shall only, be fined not less than one time but not more than five times the value of the tickets.

Article 228 Whoever, in violation of the rules and regulations on land administration, illegally transfers or scalps land-use right to make profits, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined not less than five percent but not more than 20 percent of the money gained therefrom; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined not less than five percent but not more than 20 percent of the money gained therefrom.

Article 229 If a member of a intermediary organization, whose duty is to make capital assessment, verification or validation, to do accounting or auditing, or to provide legal service, etc., deliberately provides false testifying papers, if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined .

Any member mentioned in the preceding paragraph who commits the crime prescribed in the preceding paragraph demands money or property from another or illegally accepts money or property from another shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined .

Any member mentioned in the first paragraph who, grossly neglecting his duty, produces testifying papers that are highly inconsistent with the facts, thus causing serious consequences, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined.

Article 230 Whoever, in violation of the provisions in the Law on Import and Export Commodity Inspection, evades commodity inspection and markets or uses import commodities that are subject to inspection by the commodity inspection authorities but are not declared for such inspection, or exports commodities that are subject to inspection by the commodity inspection authorities but are not proved up to standard through declaration for such inspection, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined.

Article 231 Where a unit commits the crime mentioned in the Articles from 221 through 230 of this Section, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished in accordance with the provisions of the Articles respectively.

#### Chapter IV Crimes of Infringing upon Citizens' Right of the Person and Democratic Rights

Article 232 Whoever intentionally commits homicide shall be sentenced to death, life imprisonment or fixed-term imprisonment of not less than 10 years; if the circumstances are relatively minor, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Article 233 Whoever negligently causes death to another person shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years; if the circumstances are relatively minor, he shall be sentenced to fixed-term imprisonment of not more than three years, except as otherwise specifically provided in this Law.

Article 234 Whoever intentionally inflicts injury upon another person shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance.

Whoever commits the crime mentioned in the preceding paragraph, thus causing severe injury to another person, shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; if he causes death to the person or, by resorting to especially cruel means, causes severe injury to the person, reducing the person to utter disability, he shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death, except as otherwise specifically provided in this Law.

Article 235 Whoever negligently injures another person and causes severe injury to the person shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention, except as otherwise specifically provided in this Law.

Article 236 Whoever rapes a woman by violence, coercion or any other means shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Whoever has sexual intercourse with a girl under the age of 14 shall be deemed to have committed rape and shall be given a heavier punishment.

Whoever rapes a woman or has sexual intercourse with a girl under the age of 14 shall, in any of the following circumstances, be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death:

- (1) the circumstances being flagrant;
- (2) raping a number of women or girls under the age of 14;
- (3) raping a woman before the public in a public place;
- (4) raping a woman with one or more persons in succession; or
- (5) causing serious injury or death to the victim or any other serious consequences.

Article 237 Whoever acts indecently against or insults a woman by violence, coercion or any other forcible means shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Whoever gathers a number of people to commit the crime mentioned in the preceding paragraph or commits the crime before the public in a public place shall be sentenced to fixed-term imprisonment of not less than five years.

Whoever acts indecently against a child shall be given a heavier punishment in accordance with the provisions of the preceding two paragraphs.

Article 238 Whoever unlawfully detains another person or unlawfully deprives the personal freedom of another person by any other means shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights. If he resorts to battery or humiliation, he shall be given a heavier punishment.

Whoever commits the crime mentioned in the preceding paragraph and causes serious injury to the victim shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; if he causes death to the victim, he shall be sentenced to fixed-term imprisonment of not less than 10 years. If he causes injury, disability or death to the victim by violence, he shall be convicted and punished in accordance with the provisions of Article 234 or 232 of this Law.

Whoever unlawfully detains or confines another person in order to get payment of a debt shall be punished in accordance with the provisions of the preceding two paragraphs.

Where a functionary of a State organ commits any of the crimes mentioned in the preceding three paragraphs by taking advantage of his functions and powers, he shall be given a heavier punishment in accordance with the provisions in the preceding three paragraphs correspondingly.

Article 239 Whoever kidnaps another person for the purpose of extorting money or property or kidnaps another person as a hostage shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and also to a fine or confiscation of property; if he causes death to the kidnapped person or kills the kidnapped person, he shall be sentenced to death and also to confiscation of property.

Whoever steals a baby or an infant for the purpose of extorting money or property shall be punished in accordance with the provisions of the preceding paragraph.

Article 240 Whoever abducts and traffics in a woman or child shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined; if he falls under any of the following categories, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined or sentenced to confiscation of property; if the circumstances are especially serious, he shall be sentenced to death and also to confiscation of property:

- (1) being a ringleader of a gang engaged in abducting and trafficking in women and children;
- (2) abducting and trafficking in three or more women and/or children;
- (3) raping the woman who is abducted and trafficked in;
- (4) enticing or forcing the woman who is abducted and trafficked in to engage in prostitution, or selling such woman to any other person who would force her to engage in prostitution;

(5) kidnapping a woman or child by means of violence, coercion or anaesthesia for the purpose of selling the victim;

(6) stealing a baby or an infant for the purpose of selling the victim;

(7) causing serious injury or death to the woman or child who is abducted and trafficked in or to her or his relatives or any other serious consequences; or

(8) selling a woman or a child out of the territory of China.

By abducting and trafficking in a woman or child is meant any of the following acts: abducting, kidnapping, buying, trafficking in, fetching, sending, or transferring a woman or child, for the purpose of selling the victim.

Article 241 Whoever buys an abducted woman or child shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance.

Whoever buys an abducted woman and forces her to have sexual intercourse with him shall be convicted and punished in accordance with the provisions of Article 236 of this Law.

Whoever buys an abducted woman or child and illegally deprives the victim of his or her personal freedom or restricts his or her personal freedom, or commits any criminal acts such as harming and humiliating the victim, shall be convicted and punished in accordance with the relevant provisions of this Law.

Whoever buys an abducted woman or child and commits the criminal act as specified in the second or third paragraph of this Article shall be punished in accordance with the provisions on combined punishment for several crimes.

Whoever buys an abducted woman or child and sells the victim afterwards shall be convicted and punished in accordance with the provisions of Article 240 of this Law.

Whoever buys an abducted woman or child but does not obstruct the woman from returning to her original place of residence as she wishes or does not maltreat the child nor obstruct his or her rescue may be exempted from being investigated for criminal responsibility.

Article 242 Whoever, through violence or threat, obstructs functionaries of a State organ from rescuing a sold woman or child shall be convicted and punished in accordance with the provisions of Article 277 of this Law.

The major culprit who gathers people to prevent functionaries of a State organ from rescuing a sold woman or child shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; the other participants who resort to violence or threat shall be punished in accordance with the provisions of the preceding paragraph.

Article 243 Whoever invents stories to implicate another person with the intention of having him investigated for criminal responsibility, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance; if

the consequences are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Any functionary of a State organ who commits the crime mentioned in the preceding paragraph shall be given a heavier punishment.

The provisions of the preceding two paragraphs shall not be applicable to cases of unintentional false charge, mistaken complaint or unfounded accusation.

Article 244 Where an employer, in violation of the laws and regulations on labour administration, compels its employees to work by restricting their personal freedom, if the circumstances are serious, the persons who are directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined.

Article 245 Whoever unlawfully subjects another person to a body search or a search of his residence or unlawfully intrudes into another person's residence shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Any judicial officer who abuses his power and commits the crime mentioned in the preceding paragraph shall be given a heavier punishment.

Article 246 Whoever, by violence or other methods, publicly humiliates another person or invents stories to defame him, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights.

The crime mentioned in the preceding paragraph shall be handled only upon complaint, except where serious harm is done to public order or to the interests of the State.

Article 247 Any judicial officer who extorts confession from a criminal suspect or defendant by torture or extorts testimony from a witness by violence shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention. If he causes injury, disability or death to the victim, he shall be convicted and given a heavier punishment in accordance with the provisions of Article 234 or 232 of this Law.

Article 248 Any policeman or other officer of an institution of confinement like a prison, a detention house or a custody house who beats a prisoner or maltreats him by subjecting him to corporal punishment, if the circumstances are serious shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years. If he causes injury, disability or death to the victim, he shall be convicted and given a heavier punishment in accordance with the provisions of Article 234 or 232 of this Law.

Any policeman or other officer who instigates a person held in custody to beat or maltreat another person held in custody by subjecting him to corporal punishment, the policeman or officer shall be punished in accordance with the provisions of the preceding paragraph.

Article 249 Whoever incites national enmity or discrimination, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Article 250 Where a publication carries an article designed to discriminate or humiliate an ethnic group, if the circumstances are flagrant and the consequences are serious, the persons who are directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance.

Article 251 Any functionary of a State organ who unlawfully deprives a citizen of his or her freedom of religious belief or infringes upon the customs and habits of an ethnic group, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention.

Article 252 Whoever conceals, destroys or unlawfully opens another person's letter, thereby infringing upon the citizen's right to freedom of correspondence, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than one year or criminal detention.

Article 253 Any postal worker who opens without authorization or conceals or destroys mail or telegrams shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention.

Whoever steals money or property by committing the crime mentioned in the preceding paragraph shall be convicted and given a heavier punishment in accordance with the provisions of Article 264 of this Law.

Article 254 Any functionary of a State organ who, abusing his power or using his public office for private ends, retaliates against or frames up complainants, petitioners, critics or persons who report against him shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than two years but not more than seven years.

Article 255 Any leading member of a company, enterprise, institution, State organ or people's organization who retaliates against the accountants or statisticians who perform their functions and duties according to law and resist any acts violating the Accounting Law or the Statistics Law, if the circumstances are flagrant, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Article 256 Whoever, in election of the deputies to the people's congresses and the leading members of State organs at various levels, disrupts election or obstructs the electorate and deputies from freely exercising their right to vote and to stand for election by such means as violence, threat, deception, bribery, falsification of electoral documents or false report of ballots, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or deprivation of political rights.



Article 257 Whoever uses violence to interfere with another person's freedom of marriage shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention.

Whoever commits the crime mentioned in the preceding paragraph and causes death to the victim shall be sentenced to fixed-term imprisonment of not less than two years but not more than seven years.

The crime mentioned in the first paragraph of this Article shall be handled only upon complaint.

Article 258 Whoever has a spouse and commits bigamy or knowingly marries a person who has a spouse shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention.

Article 259 Whoever knowingly cohabits with or marries a person who is the spouse of an active serviceman shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Whoever, by taking advantage of his functions and powers or the subordinate relationship, have sexual intercourse with the wife of an active serviceman by means of coercion shall be convicted and punished in accordance with the provisions of Article 236 of this Law.

Article 260 Whoever maltreats a member of his family, if the circumstances are flagrant, shall be sentenced to fixed-term imprisonment of not more than two years, criminal detention or public surveillance.

Whoever commits the crime mentioned in the preceding paragraph and causes serious injury or death to the victim shall be sentenced to fixed-term imprisonment of not less than two years but not more than seven years.

The crime mentioned in the first paragraph of this Article shall be handled only upon complaint.

Article 261 Whoever refuses to fulfill his duty to support an aged person, minor, sick person or any other person who cannot live independently, if the circumstances are flagrant, shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance.

Article 262 Whoever abducts a minor under the age of 14, thereby separating the child from his family or guardian, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention

.

## Chapter V Crimes of Property Violation

Article 263 Whoever robs public or private property by violence, coercion or other methods shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined; whoever falls under any of the following categories shall be sentenced to

fixed-term imprisonment of not less than 10 years, life imprisonment or death and shall also be fined or sentenced to confiscation of property:

- (1) intruding into another person's residence to rob;
- (2) robbing on board the means of public transportation;
- (3) robbing a bank or any other banking institution;
- (4) committing robbery repeatedly or robbing a huge, sum of money;
- (5) causing serious injury or death to another person in the course of robbery;
- (6) impersonating a serviceman or policeman in robbing;
- (7) robbing with a gun; or
- (8) robbing military materials or the materials for emergency rescue, disaster relief or social relief.

Article 264 Whoever steals a relatively large amount of public or private property or commits theft repeatedly shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; if the amount is huge, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined; if the amount is especially huge, or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined or be sentenced to confiscation of property; whoever falls under any of the following categories shall be sentenced to life imprisonment or death, and shall also be sentenced to confiscation of property:

- (1) stealing a banking institution and the amount involved is especially huge;; or
- (2) stealing precious cultural relics and the circumstances are serious.

Article 265 Whoever, for the purpose of making profits, stealthily connects his telecommunications line with that of another person, duplicates another person's telecommunications code or number or uses the telecommunication equipment or device while clearly knowing that it is stealthily connected with another person's or duplicated shall be convicted and punished in accordance with the provisions of Article 264 of this Law.

Article 266 Whoever swindles public or private money or property, if the amount is relatively large, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; if the amount is huge, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined; if the amount is especially huge, or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined or be sentenced to confiscation of property, except as otherwise specifically provided in this Law.

Article 267 Whoever forcibly seizes public or private money or property, if the amount is relatively large, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; if the amount is huge, or there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined; if the amount is especially huge, or there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined or be sentenced to confiscation of property.

Whoever commits the crime with lethal weapons shall be convicted and punished in accordance with the provisions of Article 263 of this Law.

Article 268 Where people are gathered to forcibly seize public or private money or property, if the amount is relatively large or if there are other serious circumstances, the ringleaders and active participants shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined; if the amount is huge, or there are other serious circumstances, they shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined.

Article 269 Whoever commits the crime of theft, fraud or forcible seizure of money or property and uses violence on the spot or threatens to use violence in order to conceal the booty, resist arrest or destroy the criminal evidence shall be convicted and punished in accordance with the provisions of Article 263 of this Law.

Article 270 Whoever unlawfully takes possession of another person's money or property under his custody and refuses to return it, if the amount is relatively large, shall be sentenced to fixed-term imprisonment of not more than two years, or criminal detention or be fined; if the amount is huge, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than two years but not more than five years and shall also be fined.

Whoever unlawfully takes possession of an object, which another person has forgotten about or buried, and refuses to hand it over, if the amount is relatively large, shall be punished in accordance with the provisions of the preceding paragraph.

The crime mentioned in this Article shall be handled only upon complaint.

Article 271 Any employee of a company, enterprise or any other unit who, taking advantage of his position, unlawfully takes possession of the money or property of his own unit, if the amount is relatively large, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the amount is huge,, he shall be sentenced to fixed-term imprisonment of not less than five years and may also be sentenced to confiscation of property.

If an employee who is engaged in public service in a State-owned company, enterprise or any other State-owned unit or if a person who is assigned by a State-owned company, enterprise or any other State-owned unit to a company, enterprise or any other unit that is not owned by the State to engage in public service commits the act mentioned in the preceding paragraph, he shall be convicted and punished in accordance with the provisions of Article 382 or 383 of this Law.

Article 272 Any employee of a company, enterprise or any other unit who, taking advantage of his position, misappropriates the funds of his own unit for personal use or for loaning them to another person, if the amount is relatively large and the funds are not repaid at the expiration of three months, or if the funds are repaid before the expiration of three months but the amount involved is relatively large and the funds are used for profit-making activities or for illegal activities, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the amount involved is huge,, or if it is relatively large but is not returned, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

If an employee who is engaged in public service in a State-owned company, enterprise or any other State-owned unit or any person who is assigned by a State-owned company, enterprise, or any other State-owned unit to a company, enterprise or any other unit that is not owned by the State to engage in public service commits any act mentioned in the preceding paragraph, he shall be convicted and punished in accordance with the provisions of Article 384 of this Law.

Article 273 In cases of misappropriation of funds or materials that are allocated for disaster relief, emergency rescue, flood prevention and control, support to disabled servicemen and families of revolutionary martyrs and servicemen, aid to the poor, migration and social relief, if the circumstances are serious and major harm is caused to the interests of the State and the people, the person who is directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 274 Whoever extorts public or private money or property by blackmail, if the amount is relatively large, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance; if the amount is huge, or if there are other serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Article 275 Whoever intentionally destroys or damages public or private money or property, if the amount involved is relatively large or if there are other serious circumstances, shall be sentenced to fixed-term imprisonment of not more than three years, or criminal detention or be fined; if the amount involved is huge, or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 276 Anyone who, for purposes of giving vent to spite or retaliating or out of other personal motives, destroys or damages machines or equipment, cruelly injures or slaughters farm animals or sabotages production and business operation by other means, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

## Chapter VI Crimes of Obstructing the Administration of Public Order

## Section 1 Crimes of Disturbing Public Order

Article 277 Whoever by means of violence or threat, obstructs a functionary of a State organ from carrying out his functions according to law shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, or public surveillance or be fined.

Whoever by means of violence or threat, obstructs a deputy to the National People's Congress or a deputy to a local people's congress at any level from carrying out his functions as a deputy according to law shall be punished in accordance with the provisions of the preceding paragraph.

Whoever during natural calamities or emergencies obstructs, by means of violence or threat, the workers of the Red Cross Society from performing their functions and duties according to law shall be punished in accordance with the provisions of the first paragraph.

Whoever intentionally obstructs officers of a State security organ or a public security organ from maintaining State security in accordance with law and causes serious consequences, though without resort to violence or threat, shall be punished in accordance with the provisions of the first paragraph.

Article 278 Whoever incites people to resist by violence the implementation of the laws and administrative rules and regulations of the State shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights; if the consequences are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 279 Whoever impersonates a functionary of a State organ to go about and deceive people shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Whoever impersonates a people's policeman to go about and deceive people shall be given a heavier punishment in accordance with the provisions of the preceding paragraph.

Article 280 Whoever forges, alters, buys, sells or steals, forcibly seizes or destroys the official documents, certificates or seals of a State organ shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Whoever forges the seals of a company, enterprise, institution or a people's organization shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights.

Whoever forges or alters identity cards of citizens shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political

rights; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 281 Whoever illegally manufactures, buys or sells the people's police uniforms, number plates of police vehicles and other police insignia or police implements, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined.

Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the preceding paragraph.

Article 282 Whoever unlawfully obtains State secrets by stealing, spying or buying shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Whoever unlawfully holds the documents, material or other objects classified as "strictly confidential" or "confidential" State secrets and refuses to explain their sources and purposes shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance.

Article 283 Whoever unlawfully manufactures or sells any specialized espionage equipment or devices such as those for eavesdropping or secret photographing shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance.

Article 284 Whoever unlawfully uses any special equipment or devices for eavesdropping or secret photographing, if the consequences are serious, shall be sentenced to fixed-term imprisonment of not more than two years, criminal detention or public surveillance.

Article 285 Whoever, in violation of State regulations, invades the computer information system in the fields of State affairs, national defence construction or sophisticated science and technology shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Article 286 Whoever, in violation of State regulations, cancels, alters, increases or jams the functions of the computer information system, thereby making it impossible for the system to operate normally, if the consequences are serious, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years.

Whoever, in violation of State regulations, cancels, alters or increases the data stored in or handled or transmitted by the computer information system or its application program, if the consequences are serious, shall be punished in accordance with the provisions of the preceding paragraph.

Whoever intentionally creates or spreads destructive programs such as the computer viruses, thus affecting the normal operation of the computer system, if the consequences are serious, shall be punished in accordance with the provisions of the first paragraph.

Article 287 Whoever uses computers to commit the crimes such as financial fraud, theft, embezzlement, misappropriation of public funds and theft of State secrets shall be convicted and punished in accordance with the relevant provisions of this Law.

Article 288 Whoever, in violation of State regulations, sets up or uses a radio station or occupies radio frequency without authorization and refuses to stop the use after being ordered to do so, thus disrupting the normal operation of radio communications and causing serious consequences, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined.

Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the preceding paragraph.

Article 289 Where people are gathered to commit "beating, smashing or looting", thus causing injury, disability or death to a person, the offenders shall be convicted and punished in accordance with the provisions of Article 234 or 232 of this Law. If public or private money or property is destroyed, damaged, or forcibly taken, the offenders shall be ordered to return the money or property or make compensation and, in addition, the ringleaders shall be convicted and punished in accordance with the provisions of Article 263 of this Law.

Article 290 Where people are gathered to disturb public order to such a serious extent that work in general, production, business operation, teaching or scientific research cannot go on and heavy losses are caused, the ringleaders shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years; the active participants shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights.

Where people are gathered to assault a State organ, making it impossible for the State organ to conduct its work and causing heavy losses, the ringleaders shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years; the active participants shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights.

Article 291 Where people are gathered to disturb order at railway stations or bus terminals, wharves, civil airports, marketplaces, parks, theaters, cinemas, exhibition halls, sports grounds or other public places, or to block traffic or undermine traffic order, or resist or obstruct public security administrators of the State from carrying out their duties according to law, if the circumstances are serious, the ringleaders shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance.

Article 292 Where people are gathered to engage in affrays, the ringleaders and the active participants shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance; the ringleaders and the active participants who fall under any of the following categories, shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years:

- (1) gathering people to engage in affrays repeatedly;
- (2) the number of people gathered to engage in affrays is large and so is the scale, thus bringing about a bad effect on society;
- (3) gathering people to engage in affrays in public places or on vital traffic lines and causing serious public disorder; or
- (4) gathering people to engage in affrays with weapons.

Where people are gathered to engage in affrays, thus causing serious injury or death to a person, he shall be convicted and punished in accordance with the provisions of Article 234 or 232 of this Law.

Article 293 Whoever commits any of the following acts of creating disturbances, thus disrupting public order, shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance:

- (1) beating another person at will and to a flagrant extent;
- (2) chasing, intercepting or hurling insults to another person to a flagrant extent;
- (3) forcibly taking or demanding, willfully damaging, destroying or occupying public or private money or property to a serious extent; or
- (4) creating disturbances in a public place, thus causing serious disorder in such place.

Article 294 Whoever forms, leads or takes an active part in organizations in the nature of criminal syndicate to commit organized illegal or criminal acts through violence, threat or other means, such as lording it over the people in an area, perpetrating outrages, riding roughshod over or cruelly injuring or killing people, thus seriously disrupting economic order and people's daily activities, shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; other participants shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights.

Members of Mafia abroad who recruit members within the territory of the People's Republic of China shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Whoever, in addition to the offenses mentioned in the preceding two paragraphs, commits any other offences shall be punished in accordance with the provisions on combined punishment for several crimes.

Any functionary of a State organ who harbors an organization in the nature of criminal syndicate or connives at such organization to conduct illegal or criminal acts shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or deprivation of political rights; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.



Article 295 Whoever teaches another person how to commit a crime shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years; if the circumstances are especially serious, he shall be sentenced to life imprisonment or death.

Article 296 Where an assembly, a procession or a demonstration is held with no application made in accordance with the provisions of law or no permission granted for the application or where it is held not in accordance with the time for start and stop, venue and routes permitted by the competent authorities, and the order of dismissal is disobeyed and public order seriously disrupted, the persons who are in charge and the persons who are directly responsible for the assembly, procession or demonstration shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights.

Article 297 Whoever, in violation of the provisions of law, participates in an assembly, a procession or a demonstration with weapons, controlled cutting tools or explosives shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights.

Article 298 Whoever disturbs, breaks into or disrupts by any other means an assembly, a procession or a demonstration held in compliance with law, thus causing public disorder, shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights.

Article 299 Whoever desecrates the National Flag or the National Emblem of the People's Republic of China by intentionally burning, mutilating, scrawling on, defiling or trampling upon it in a public place shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights.

Article 300 Whoever forms or uses superstitious sects or secret societies or weird religious organizations or uses superstition to undermine the implementation of the laws and administrative rules and regulations of the State shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than seven years.

Whoever forms or uses superstitious sects or secret societies or weird religious organizations or uses superstition to cheat another person, and causes death to the person shall be punished in accordance with the provisions of the preceding paragraph.

Whoever forms or uses superstitious sects or secret societies or weird religious organizations or uses superstition to rape a woman or swindle money or property shall be convicted and punished in accordance with the provisions of Articles 236 and Article 266 of this Law respectively.

Article 301 Where people are gathered to engage in licentious activities, the ringleaders and the persons who repeatedly take part in such activities shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance.

Whoever entices a minor to join people in licentious activities shall be given a heavier punishment in accordance with the provisions of the preceding paragraph.

Article 302 Whoever steals or insults a corpse shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance.

Article 303 Whoever, for the purpose of profit, gathers people to engage in gambling, runs a gambling house or makes gambling his profession shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined.

Article 304 Any postal worker who, grossly neglecting his duty, intentionally delays the delivery of mail, thus causing grave losses to public money or property or to the interests of the State or the people, shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention.

## Section 2 Crimes of Impairing Judicial Administration

Article 305 If, in criminal proceedings, a witness, expert witness, recorder or interpreter intentionally gives false testimony or makes a false expert evaluation, record or translation concerning the circumstances that have an important bearing on a case, in order to frame another person or conceal criminal evidence, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 306 If, in criminal proceedings, a defender or agent ad litem destroys or forges evidence, helps any of the parties destroy or forge evidence, or coerces the witness or entices him into changing his testimony in defiance of the facts or give false testimony, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Where a witness's testimony or other evidence provided, shown or quoted by a defender or agent ad litem is inconsistent with the facts but is not forged intentionally, it shall not be regarded as forgery of evidence.

Article 307 Whoever, by violence, threat, bribery or any other means, obstructs a witness from giving testimony or instigates another person to give false testimony shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Whoever helps any of the parties destroy or forge evidence, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Any judicial officer who commits any of the crimes mentioned in the preceding two paragraphs shall be given a heavier punishment.

Article 308 Whoever retaliates against a witness shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 309 Whoever gathers people to stir up trouble in a court or assault the court or beats a judicial officer, thus seriously disrupting the order of the court, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, or public surveillance or be fined.

Article 310 Whoever knowingly provides a hiding place, money or property to a criminal, or helps the criminal escape or gives false testimony to protect the criminal shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Conspirators to a crime mentioned in the preceding paragraph shall be regarded as joint offenders and punished as such.

Article 311 Whoever, while clearly knowing that another person has committed the crime of espionage, refuses to provide relevant particulars or relevant evidence when an officer from a State security organ asks him to do so, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance.

Article 312 Whoever knowingly conceals, transfers, purchases or helps to sell illegally acquired goods shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined.

Article 313 Whoever has the ability to execute the judgment or order made by a People's Court but refuses to do so, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or be fined.

Article 314 Whoever conceals, transfers, sells or intentionally destroys or damages the property sealed up, distrained or frozen by judicial organs, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or be fined.

Article 315 Any criminal who is held in custody according to law commits any of the following acts, thus undermining the order of prison administration, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years:

- (1) beating a prison policeman or any other officer;
- (2) organizing another person held in custody to undermine the order of prison administration;
- (3) gathering persons held in custody to stir up trouble, thus disrupting the normal order of prison administration; or
- (4) beating or subjecting another person held in custody to corporal punishment or instigating another person to do so.

Article 316 Any criminal, defendant or criminal suspect who escapes after being held in custody according to law shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Whoever rescues the criminal, defendant or criminal suspect under escort shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than seven years.

Article 317 Ringleaders who organize a jailbreak and the active participants shall be sentenced to fixed-term imprisonment of not less than five years; other participants shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Ringleaders who instigate a riot to escape from prison or gather people to raid a prison with weapons and the active participants shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment; if the circumstances are especially serious, they shall be sentenced to death; other participants shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

### Section 3 Crimes Against Control of National Border (Frontier)

Article 318 Whoever makes arrangements for another person to illegally cross the national border (frontier) shall be sentenced to fixed-term imprisonment of not less than two years but not more than seven years and shall also be fined; if he falls under any of the following categories, he shall be sentenced to fixed-term imprisonment of not less than seven years or life imprisonment , and shall also be fined or be sentenced to confiscation of property:

- (1) being a ringleader of a group that makes arrangements for other persons to illegally cross the national border(frontier );
- (2) repeatedly making arrangements for other persons to illegally cross the national border(frontier), or making arrangements for a large number of persons to do so;
- (3) causing serious injury or death to the persons for whom he makes arrangements to illegally cross the national border(frontier);
- (4) depriving or restricting personal freedom of the persons for whom he makes arrangements to illegally cross the national border(frontier);
- (5) resisting inspection by means of violence or threat;
- (6) the sum of illegal earnings being huge;; or
- (7) other especially serious circumstances being involved.

Whoever, in addition to the crime mentioned in the preceding paragraph, kills, injures, rapes, or abducts and sells the persons for whom he makes arrangements to illegally cross the national border(frontier) or commits other criminal acts against them or kills, injures or commits other

criminal acts against the inspectors shall be punished in accordance with the provisions on combined punishment for several crimes.

Article 319 Whoever, in the name of export of labour service, economic exchange, trade, etc. , practises fraud to obtain the passport, visa or other exit certificates for the purpose of helping other persons to illegally cross the national border(frontier) shall be sentenced to fixed-term imprisonment of not more than three years and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined.

Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the preceding paragraph.

Article 320 Whoever provides another person with a counterfeit or altered passport, visa or other exit and entry certificates or sells passports, visa or other exit and entry certificates shall be sentenced to fixed-term imprisonment of not more than five years and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years and shall also be fined.

Article 321 Whoever transports another person to illegally cross the national border (frontier) shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance and shall also be fined; if he falls under any of the following categories, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined:

- (1) repeatedly transporting persons to illegally cross the national border(frontier), or transporting a large number of persons;
- (2) the vessels, vehicles or other means of transportation employed not meeting the necessary safety conditions to such an extent that it would cause serious consequences;
- (3) the sum of illegal earnings being huge;; or
- (4) other especially serious circumstances being involved.

Whoever in transporting other persons to illegally cross the national border (frontier) causes serious injury or death to the persons being transported or resists inspection by means of violence or threat shall be sentenced to fixed-term imprisonment of not less than seven years and shall also be fined.

Whoever, in addition to any of the crimes mentioned in the preceding two paragraphs, kills, injures, rapes, or abducts and sells the persons being transported or commits other criminal acts against them or kills, injures or commits other criminal acts against the inspectors shall be punished in accordance with the provisions on combined punishment for several crimes.

Article 322 Whoever, in violation of the laws or regulations on administration of the national border (frontier), illegally crosses the national border (frontier), if the circumstances are serious,

shall be sentenced to fixed-term imprisonment of not more than one year, criminal detention or public surveillance and shall also be fined.

Article 323 Whoever intentionally damages the boundary tablets, boundary markers or permanent survey indicators along the national border shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

#### Section 4 Crimes Against Control of Cultural Relics

Article 324 Whoever intentionally damages or destroys valuable cultural relics under State protection or the major sites designated to be protected at the national or provincial level for their historical and cultural value shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined.

Whoever intentionally damages or destroys places of historical and cultural interest under State protection, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also, or shall only, be fined.

Whoever negligently damages or destroys valuable cultural relics under State protection or the major sites designated to be protected at the national or provincial level for their historical and cultural value, if the consequences are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Article 325 Whoever, in violation of the laws or regulations on protection of cultural relics, sells or presents as a gift to a foreigner without authorization any valuable cultural relic in his collection, the export of which is prohibited by the State, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and may also be fined.

Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the preceding paragraph.

Article 326 Whoever, for the purpose of profit, resells the cultural relics, the sale of which is prohibited by the State, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention, and shall also be fined; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined.

Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the preceding paragraph.

Article 327 Where a State-owned museum, library or other institution sells or presents as gifts without permission any cultural relics in its collection, which is under State protection, to any non-State-owned institution or individual, it shall be fined, and the persons who are directly in charge

and the other persons who are directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Article 328 Whoever excavates and robs a site of ancient culture or ancient tomb of historical, artistic or scientific value shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined; if the circumstances are relatively minor, he shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined; if he falls under any of the following categories, he shall be sentenced to fixed-term imprisonment of not less than 10 years, or life imprisonment or death and shall also be fined or be sentenced to confiscation of property:

- (1) excavating and robbing a site of ancient culture or ancient tomb which is designated as a major site to be protected at the national or provincial level for their historical and cultural value;
- (2) being a ringleader of a gang engaged in excavating and robbing sites of ancient culture or ancient tombs;
- (3) repeatedly excavating and robbing sites of ancient culture or ancient tombs; or
- (4) excavating a site of ancient culture or ancient tomb and robbing valuable cultural relics therein, or causing serious damage to such relics.

Whoever excavates and robs fossils of paleoanthropoids or paleovertebrates of scientific value which is under State protection shall be punished in accordance with the provisions of the preceding paragraph.

Article 329 Whoever forcibly seizes or steals archives owned by the State shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Whoever, in violation of the provisions of the Archives Law, sells or transfers without authorization State-owned archives, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Whoever commits any of the acts mentioned in the preceding two paragraphs, which concurrently constitutes another crime provided in this Law, shall be convicted and punished in accordance with the provisions on heavier punishment for such crime.

## Section 5 Crimes of Impairing Public Health

Article 330 Whoever, in violation of the provisions of the Law on Prevention and Treatment of Infectious Diseases, commits any of the following acts and thus causes the spread or a grave danger of the spread of an A Class infectious disease shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years:

- (1) failure on the part of a water supply unit to supply drinking water in conformity with the hygienic standards set by the State;

(2) refusal to give disinfection treatment, according to the sanitary requirements raised by the health and anti-epidemic agencies, to sewage, wastes or feces contaminated with the pathogen of infectious diseases;

(3) approving or conniving at the employment of patients of infectious diseases, pathogen carriers or suspected patients of infectious diseases at jobs, which they are prohibited from taking by the health administration department under the State Council because of the likelihood of causing the spread of infectious diseases; or

(4) refusal to execute the preventive and control measures proposed by the health and anti-epidemic agencies according to the Law on Prevention and Treatment of Infectious Diseases.

Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the preceding paragraph.

The scope of A Class infectious diseases shall be determined in accordance with the Law of the People's Republic of China on the Prevention and Treatment of Infectious Diseases and relevant regulations of the State Council.

Article 331 Any person engaged in the experimentation, storage, carrying or transportation of bacterial strains and virus strains of infectious diseases who, in violation of the relevant provisions of the health administration department under the State Council, causes the spread of the bacterial strains and virus strains of infectious diseases, if the consequences are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 332 Whoever, in violation of the provisions on frontier health and quarantine, causes the spread or a grave danger of the spread of a quarantinable infectious disease shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined.

Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the preceding paragraph.

Article 333 Whoever illegally arranges for another person to sell blood shall be sentenced to fixed-term imprisonment of not more than five years and shall also be fined; whoever compels another person to sell blood by violence or threat shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined.

Whoever commits an act mentioned in the preceding paragraph, thus causing injury to another person, shall be convicted and punished in accordance with the provisions of Article 234 of this Law.

Article 334 Whoever unlawfully collects or supplies blood or makes or supplies blood products which do not meet the standards prescribed by the State to such an extent as to harm human



health shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined; if serious harm has been caused to human health, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined or be sentenced to confiscation of property.

Where a department that is approved by the competent department of the State for collecting or supplying blood or making or supplying blood products does not carry out testing as required or violates other operating procedure, thus harming another person's health, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Article 335 Any medical worker who, grossly neglecting his duty, causes death or severe harm to the health of the person seeking medical service shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Article 336 Whoever, without obtaining the qualification for practising medicine, unlawfully practises medicine, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; if severe harm is caused to the health of the person seeking medical service, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined; if death is caused, he shall be sentenced to fixed-term imprisonment of not less than 10 years and shall also be fined.

Whoever, without obtaining the qualification for practising medicine, undoes a contraception operation, or performs a false contraception operation or an operation for terminating gestation or for removing intrauterine devices, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; if severe harm is caused to the health of the person seeking medical service, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined; if death is caused, he shall be sentenced to fixed-term imprisonment of not less than 10 years and shall also be fined.

Article 337 Whoever, in violation of the provisions of the Law on the Entry and Exit Animal and Plant Quarantine, evades animal and plant quarantine and thereby causes a serious animal or plant epidemic shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined.

Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the preceding paragraph.

Section 6 Crimes of Impairing the Protection of Environment and Resources

Article 338 Whoever, in violation of the regulations of the State, discharges, dumps or treats radioactive waste, waste containing pathogen of infectious diseases, toxic substances or other hazardous waste on the land or in the water bodies or the atmosphere, thus causing a major environmental pollution accident which leads to the serious consequences of heavy losses of public or private property or human casualties, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.

Article 339 Whoever, in violation of the regulations of the State, has solid waste from abroad dumped, piled up, or treated within the territory of China shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined; if a major environmental pollution accident is caused, which leads to heavy losses of public or private property or serious harm to human health, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years and shall also be fined.

Whoever, without permission of the competent administration department under the State Council, imports solid waste as raw material, thus causing a major environmental pollution accident, which leads to heavy losses of public or private property or serious harm to human health, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined.

Whoever, under the pretext of using it as raw material, imports solid waste that cannot be used as such shall be convicted and punished in accordance with the provisions of Article 155 of this Law.

Article 340 Whoever, in violation of the law or regulations on protection of aquatic resources, catches aquatic products in an area or during a season closed to fishing, or uses prohibited fishing gear or methods for the purpose, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance or be fined.

Article 341 Whoever illegally catches or kills precious and endangered species of wildlife under special State protection or illegally purchases, transports or sells such species of wildlife as well as the products thereof shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years and shall also be fined or be sentenced to confiscation of property.

Whoever, in violation of the law or regulations on hunting, hunts wildlife in an area or during a season closed to hunting or uses prohibited hunting gear or methods for the purpose, thus damaging wildlife resources, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, or public surveillance or be fined.

Article 342 Whoever, in violation of the law or regulations on land administration, unlawfully occupies cultivated land and uses it for other purposes, if the area involved is relatively large and a large area of such land is damaged, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also, or shall only, be fined.

Article 343 Whoever, in violation of the provisions of the Mineral Resources Law, mines without a mining license, enters and mines in a mining area that is embraced in State plans or a mining area that is of great value to the national economy or another person's mining area, or mines specified minerals of which protective mining is prescribed by the State, if he refuses to stop mining after being ordered to do so, thus damaging the mineral resources, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; if severe damage is caused to mineral resources, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.

Whoever, in violation of the provisions of the Mineral Resources Law, mines mineral resources in a destructive way, thus causing severe damage to mineral resources, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention and shall also be fined.

Article 344 Whoever, in violation of the provisions of the Forestry Law, illegally fells or destroys precious trees shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.

Article 345 Whoever stealthily fells trees, bamboo, etc. in forest or woods, if the amount involved is relatively large, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; if the amount involved is huge,, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined; if the amount involved is especially huge,, he shall be sentenced to fixed-term imprisonment of not less than seven years and shall also be fined;

Whoever, in violation of the provisions of the Forestry Law, arbitrarily fells trees, bamboo, etc. in forest or woods, if the amount involved is relatively large, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; if the amount involved is huge,, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.

Whoever, for the purpose of profit, illegally purchases in a forest area trees , bamboo, etc., which he knows are felled stealthily or arbitrarily, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.

Whoever stealthily or arbitrarily fells trees, bamboo, etc. in forest or woods, of nature reserves at the national level shall be given a heavier punishment.

Article 346 Where a unit commits any of the crimes mentioned in the Articles from 338 through 345 of this Section, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the Articles of this Section respectively.

#### Section 7 Crimes of Smuggling, Trafficking in, Transporting and Manufacturing Narcotic Drugs

Article 347 Whoever smuggles, traffics in, transports or manufactures narcotic drugs, regardless of the quantity involved, shall be investigated for criminal responsibility and given criminal punishment.

Whoever smuggles, traffics in, transports or manufactures narcotic drugs and falls under any of the following categories, shall be sentenced to fixed-term imprisonment of 15 years, life imprisonment or death and also to confiscation of property:

- (1) persons who smuggle, traffic in, transport or manufacture opium of not less than 1,000 grams, heroin or methylaniline of not less than 50 grams or other narcotic drugs of large quantities;
- (2) ringleaders of gangs engaged in smuggling, trafficking in, transporting or manufacturing narcotic drugs;
- (3) persons who shield with arms the smuggling, trafficking in, transporting or manufacturing of narcotic drugs;
- (4) persons who violently resist inspection, detention or arrest to a serious extent; or
- (5) persons involved in organized international drug trafficking.

Whoever smuggles, traffics in, transports or manufactures opium of not less than 200 grams but less than 1,000 grams, or heroin or methylaniline of not less than 10 grams but less than 50 grams or any other narcotic drugs of relatively large quantities shall be sentenced to fixed-term imprisonment of not less than seven years and shall also be fined.

Whoever smuggles, traffics in, transports or manufactures opium of less than 200 grams, or heroin or methylaniline of less than 10 grams or any other narcotic drugs of small quantities shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.

Where a unit commits any crime mentioned in the preceding three paragraphs, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the preceding three paragraphs respectively.

Whoever makes use of minors or aids and abets them to smuggle, traffic in, transport or manufacture narcotic drugs or sells narcotic drugs to minors shall be given a heavier punishment.

With respect to persons who have repeatedly smuggled, trafficked in, transported or manufactured narcotic drugs and have not been dealt with, the quantity of narcotic drugs thus involved shall be computed cumulatively.

Article 348 Whoever illegally possesses opium of not less than 1,000 grams, or heroin or methylaniline of not less than 50 grams, or any other narcotic drugs of large quantities shall be sentenced to fixed-term imprisonment of not less than seven years or life imprisonment and shall also be fined; whoever illegally possesses opium of not less than 200 grams but less than 1,000 grams, or heroin or methylaniline of not less than 10 grams but less than 50 grams or any other narcotic drugs of relatively large quantities shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.

Article 349 Whoever shields offenders engaged in smuggling, trafficking in, transporting or manufacturing of narcotic drugs or whoever harbors, transfers or covers up, for such offenders, narcotic drugs or their pecuniary and other gains from such criminal activities shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Anti-drug officers or functionaries of a State organ who shield or cover up offenders engaged in smuggling, trafficking in, transporting or manufacturing of narcotic drugs shall be given a heavier punishment in accordance with the provisions of the preceding paragraph.

Conspirators to the crimes mentioned in the preceding two paragraphs shall be regarded as joint offenders in the crime of smuggling, trafficking in, transporting or manufacturing of narcotic drugs and punished as such.

Article 350 Whoever, in violation of the regulations of the State, illegally transports or carries into or out of the territory of China acetic anhydride, ether, chloroform or any other raw material or elixir used in the manufacture of narcotic drugs or, in violation of the regulations of the State, illegally buys or sells the substances mentioned above shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined; if the amount involved is large, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined.

Whoever provides another person with the substances mentioned in the preceding paragraph, while clearly knowing that the person manufactures narcotic drugs, shall be regarded as a joint offender in the crime of manufacturing narcotic drugs and punished as such.

Where a unit commits any crime mentioned in the preceding two paragraphs, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the preceding two paragraphs.

Article 351 Whoever illegally cultivates mother plants of narcotic drugs, such as opium poppy and marijuana, shall be forced to uproot them. Whoever falls under any of the following categories

shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance and shall also be fined:

- (1) cultivating opium poppy of not less than 500 plants but less than 3,000 plants or any mother plants of other narcotic drugs in relatively large quantities;
- (2) cultivating any mother plants of narcotic drugs again after being dealt with by the public security organ; or
- (3) resisting the uprooting of such mother plants.

Whoever illegally cultivates opium poppy of not less than 3,000 plants or any mother plants of other narcotic drugs in large quantities shall be sentenced to fixed-term imprisonment of not less than five years and shall also be fined or be sentenced to confiscation of property.

Persons who illegally cultivate opium poppy or any mother plants of other narcotic drugs but voluntarily uproot them before harvest may be exempted from punishment.

Article 352 Whoever illegally buys or sells, transports, carries or possesses a relatively large quantity of the seeds or seedlings of mother plants of narcotic drugs, such as opium poppy, which have not been inactivated, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined.

Article 353 Whoever lures, aids and abets, or cheats another person into drug ingestion or injection shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.

Whoever forces another person to ingest or inject narcotic drugs shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined.

Whoever lures, aids and abets or cheats a minor into drug ingestion or injection or forces a minor to ingest or inject narcotic drugs shall be given a heavier punishment.

Article 354 Whoever provides shelter for another person to ingest or inject narcotic drugs shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined.

Article 355 Persons allowed by law to engage in manufacture, transportation, administration or utilization of State-controlled narcotic and psychotropic substances who, in violation of the regulations of the State, provide narcotic and psychotropic substances that can make people addicted to their use and are controlled under State regulations to persons who ingest or inject narcotic drugs shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined. If they provide offenders engaged in drug smuggling or trafficking with State-controlled narcotic and psychotropic substances that can make people addicted to their use and are

controlled under State regulations, for the purpose of profit, provide narcotic and psychotropic substances to persons who ingest or inject narcotic drugs shall be convicted and punished in accordance with the provisions of Article 347 of this Law.

Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the preceding paragraph.

Article 356 Any person who was punished for the crime of smuggling, trafficking in, transporting, manufacturing or illegally possessing narcotic drugs commits again any of the crimes mentioned in this Section shall be given a heavier punishment.

Article 357 The term "narcotic drugs" as used in this Law means opium, heroin, methylaniline(ice), morphine, marijuana, cocaine and other narcotic and psychotropic substances that can make people addicted to their use and are controlled under State regulations.

The quantity of narcotic drugs smuggled, trafficked in, transported, manufactured or illegally possessed shall be calculated on the basis of the verified amount and shall not be converted according to its purity.

#### Section 8 Crimes of Organizing, Forcing, Luring, Sheltering, or Procuring Other Persons to Engage in Prostitution

Article 358 Whoever arranges for or forces another person to engage in prostitution shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined; whoever falls under any of the following categories shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and shall also be fined or be sentenced to confiscation of property:

- (1) making arrangements for another person to engage in prostitution and the circumstances being serious;
- (2) forcing a girl under the age of 14 to engage in prostitution;
- (3) forcing a number of persons to engage in prostitution or repeatedly forcing another person to engage in prostitution;
- (4) forcing the victim to engage in prostitution after raping her; or
- (5) causing serious injury, death or other serious consequences to the person who is forced to engage in prostitution.

Whoever falls under any of the categories mentioned in the preceding paragraph, if the circumstances are especially serious, shall be sentenced to life imprisonment or death and shall also be sentenced to confiscation of property.

Whoever assists in arranging for another person to engage in prostitution shall be sentenced to fixed-term imprisonment of not more than five years and shall also be fined; if the circumstances

are serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years and shall also be fined.

Article 359 Whoever lures other persons into or shelters prostitution or procures other persons to engage in prostitution shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years and shall also be fined.

Whoever lures a girl under the age of 14 to engage in prostitution shall be sentenced to fixed-term imprisonment of not less than five years and shall also be fined.

Article 360 Any person who knows clearly that he or she is suffering from serious venereal diseases such as syphilis and gonorrhea goes whoring or engages in prostitution shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or public surveillance and shall also be fined.

Whoever whores with a girl under the age of 14 shall be sentenced to fixed-term imprisonment of not less than five years and shall also be fined.

Article 361 Any employee of a unit in the trade of hotels, in the catering or entertainment services, or in the taxi services who, by taking advantage of his or her work unit, arranges for, forces or lures another person to engage in prostitution or provides shelter for prostitution or procures other persons to engage in prostitution, shall be convicted and punished in accordance with the provisions of Articles 358 and 359 of this Law.

If the chief leading member of any of the units listed above commits the crime mentioned in the preceding paragraph, he or she shall be given a heavier punishment.

Article 362 Where an employee of a unit in the trade of hotels, in the catering or entertainment services, or in the taxi services, informs law-breakers of a public security organ's plan to ferret out or deal with activities of prostitution or whoring, if the circumstances are serious, he shall be convicted and punished in accordance with the provisions of Article 310 of this Law.

## Section 9 Crimes of Producing, Selling or Disseminating Pornographic Materials

Article 363 Whoever, for the purpose of profit, produces, duplicates, publishes, sells or disseminates pornographic materials shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment, and shall also be fined or be sentenced to confiscation of property.

Whoever provides book numbers for another person to publish pornographic books or periodicals shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; whoever knowingly provides books numbers to another person who will use them for publishing pornographic books or periodicals shall be punished in accordance with the provisions of the preceding paragraph.



Article 364 Whoever disseminates pornographic materials including books, periodicals, movies, video-audio tapes and pictures, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than two years, criminal detention or public surveillance.

Whoever arranges for shows of pornographic audio-video products including movies and video-tapes shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined.

Whoever produces or duplicates pornographic audio-video products including movies and video-tapes and arranges for their show shall be given a heavier punishment in accordance with the provisions of the second paragraph of this Article.

Whoever disseminates pornographic materials to a minor under the age of 18 shall be given a heavier punishment.

Article 365 Whoever arranges for pornographic performances shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined.

Article 366 Where a unit commits any of the crimes mentioned in Articles 363, 364 and 365 of this Section, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the Articles respectively.

Article 367 For the purpose of this Law, pornographic materials refer to obscene books, periodicals, movies, video-and audio-tapes, pictures, etc. that explicitly portray sexual behavior or undisguisedly publicize pornographic materials.

Scientific works on human physiology or medical knowledge are not pornographic materials.

Literary and art works of artistic value which contain erotic contents shall not be regarded as pornographic materials.

## Chapter VII Crimes of Impairing the Interests of National Defence

Article 368 Whoever by violence or threat obstructs a serviceman from performing his duties according to law shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance or be fined.

Whoever intentionally obstructs military operations of armed forces, if the consequences are serious, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Article 369 Whoever sabotages weapons or equipment, military installations or military telecommunications shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance; whoever sabotages major weapons or equipment, military installations or military telecommunications shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death. He shall be given a heavier punishment during wartime.

Article 370 Whoever knowingly provides substandard weapons or equipment or military installations to the armed forces shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death.

Whoever commits the crime mentioned in the preceding paragraph through negligence, thus causing serious consequences, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Where a unit commits the crime mentioned in the first paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the first paragraph.

Article 371 Where people are gathered to assault a military restricted zone, thus severely disturbing the order of the zone, the ringleaders shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years; other active participants shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention, public surveillance or deprivation of political rights.

Where people are gathered to disturb the order of a military administrative zone, if the circumstances are so serious that work in the zone cannot be carried on and heavy losses are caused, the ringleaders shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years; other active participants shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights.

Article 372 Whoever impersonates a serviceman to go about and deceive people shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Article 373 Whoever incites a serviceman to desert from the unit or knowingly employs such a deserter, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance.

Article 374 Whoever engages in malpractice for selfish ends in enlistment, accepting or sending unqualified recruits, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 375 Whoever forges, alters, buys, sells or steals or forcibly seizes the official documents, certificates or seals of the armed forces shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or deprivation of political rights; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Whoever illegally manufactures, buys or sells uniforms or special symbols such as number plates of vehicles of the armed forces, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined.

Where a unit commits the crime mentioned in the second paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the said paragraph.

Article 376 Any reservist who refuses or escapes enlistment or military training in wartime, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Any citizen who refuses or escapes military service in wartime, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention.

Article 377 Whoever intentionally provides false information about the enemy to the armed forces during wartime, if the consequences are serious, shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment.

Article 378 Whoever spreads rumors to create confusion among the troops and disturb their morale during wartime shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Article 379 Whoever during wartime knowingly provides shelter, money or property to a serviceman who has deserted from the unit, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Article 380 Where a unit, during wartime, refuses to accept orders for military supplies or intentionally delays the provision of such supplies, if the circumstances are serious, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than five

years or criminal detention; if the consequences are serious, they shall be sentenced to fixed-term imprisonment of not less than five years.

Article 381 Whoever, during wartime, rejects requisition for military purposes, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

## Chapter VIII Crimes of Embezzlement and Bribery

Article 382 Any State functionary who, by taking advantage of his office, appropriates, steals, swindles public money or property or by other means illegally take it into his own possession shall be guilty of embezzlement.

Any person authorized by State organs, State-owned companies, enterprises, institutions or people's organizations to administer and manage State-owned property who, by taking advantage of his office, appropriates, steals, swindles the said property or by other means illegally take it into his own possession shall be regarded as being guilty of embezzlement.

Whoever conspires with the person mentioned in the preceding two paragraphs to engage in embezzlement shall be regarded as joint offenders in the crime and punished as such.

Article 383 Persons who commit the crime of embezzlement shall be punished respectively in the light of the seriousness of the circumstances and in accordance with the following provisions:

- (1) An individual who embezzles not less than 100,000 yuan shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and may also be sentenced to confiscation of property; if the circumstances are especially serious, he shall be sentenced to death and also to confiscation of property.
- (2) An individual who embezzles not less than 50,000 yuan but less than 100,000 yuan shall be sentenced to fixed-term imprisonment of not less than five years and may also be sentenced to confiscation of property; if the circumstances are especially serious, he shall be sentenced to life imprisonment and confiscation of property.
- (3) An individual who embezzles not less than 5,000 yuan but less than 50,000 yuan shall be sentenced to fixed-term imprisonment of not less than one year but not more than seven years; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than seven years but not more than 10 years. If an individual who embezzles not less than 5,000 yuan and less than 10,000 yuan, shows true repentance after committing the crime, and gives up the embezzled money of his own accord, he may be given a mitigated punishment, or he may be exempted from criminal punishment but shall be subjected to administrative sanctions by his work unit or by the competent authorities at a higher level.
- (4) An individual who embezzles less than 5,000 yuan, if the circumstances are relatively serious, shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention; if

the circumstances are relatively minor, he shall be given administrative sanctions at the discretion of his work unit or of the competent authorities at a higher level.

Whoever repeatedly commits the crime of embezzlement and goes unpunished shall be punished on the basis of the cumulative amount of money he has embezzled.

Article 384 Any State functionary who, by taking advantage of his position, misappropriates public funds for his own use or for conducting illegal activities, or misappropriates a relatively large amount of public funds for profit-making activities, or misappropriates a relatively large amount of public funds and fails to return it after the lapse of three months, shall be guilty of misappropriation of public funds and shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years. Whoever misappropriates a huge amount of public funds and fails to return it shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment.

Whoever misappropriates for his own use funds or materials allocated for disaster relief, emergency rescue, flood prevention and control, special care for disabled servicemen and the families of revolutionary martyrs and servicemen, aid to the poor, migration and social relief shall be given a heavier punishment.

Article 385 Any State functionary who, by taking advantage of his position, extorts money or property from another person, or illegally accepts another person's money or property in return for securing benefits for the person shall be guilty of acceptance of bribes.

Any State functionary who, in economic activities, violates State regulations by accepting rebates or service charges of various descriptions and taking them into his own possession shall be regarded as guilty of acceptance of bribes and punished for it.

Article 386 Whoever has committed the crime of acceptance of bribes shall, on the basis of the amount of money or property accepted and the seriousness of the circumstances, be punished in accordance with the provisions of Article 383 of this Law. Whoever extorts bribes from another person shall be given a heavier punishment.

Article 387 Where a State organ, State-owned company, enterprise, institution or people's organization extorts from another person or illegally accepts another person's money or property in return for securing benefits for the person, if the circumstances are serious, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Any of the units mentioned in the preceding paragraph that, in economic activities, secretly accepts off-the-book rebates or service charges of various descriptions shall be regarded as guilty of acceptance of bribes and punished in accordance with the provisions of the preceding paragraph.

Article 388 Any State functionary who, by taking advantage of his own functions and powers or position, secures illegitimate benefits for an entrusting person through another State functionary's performance of his duties and extorts from the entrusting person or accepts the entrusting person's money or property shall be regarded as guilty of acceptance of bribes and punished for it.

Article 389 Whoever, for the purpose of securing illegitimate benefits, gives money or property to a State functionary shall be guilty of offering bribes.

Whoever, in economic activities, violates State regulations by giving a relatively large amount of money or property to a State functionary or by giving him rebates or service charges of various descriptions shall be regarded as guilty of offering bribes and punished for it.

Any person who offers money or property to a State functionary through extortion but gains no illegitimate benefits shall not be regarded as offering bribes.

Article 390 Whoever commits the crime of offering bribes shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; whoever offers bribes to secure illegitimate benefits, if the circumstances are serious or if heavy losses are caused to the interests of the State, shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and may also be sentenced to confiscation of property .

Any briber who, before he is investigated for criminal responsibility, voluntarily confesses his act of offering bribes may be given a mitigated punishment or exempted from punishment.

Article 391 Whoever, for the purpose of securing illegitimate benefits, gives money or property to a State organ, State-owned company, enterprise, institution or people's organization or, in economic activities, violates State regulations by giving rebates or service charges of various descriptions shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Where a unit commits the crime mentioned in the preceding paragraph, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the preceding paragraph.

Article 392 Whoever introduces a bribe to a State functionary, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Any person who introduces a bribe but voluntarily confesses the act before he is investigated for criminal responsibility may be given a mitigated punishment or exempted from punishment.

Article 393 Where a unit offers bribes for the purpose of securing illegitimate benefits or, in violation of State regulations, gives rebates or service charges to a State functionary, if the circumstances are serious, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention. Any person who takes into his own possession the illegal gains derived from bribing shall be convicted and punished in accordance with the provisions of Articles 389 and 390 of this Law.

Article 394 Any State functionary who, in his activities of domestic public service or in his contacts with foreigners, accepts gifts and does not hand them over to the State as is required by State regulations, if the amount involved is relatively large, shall be convicted and punished in accordance with the provisions of Articles 382 and 383 of this Law.

Article 395 Any State functionary whose property or expenditure obviously exceeds his lawful income, if the difference is enormous, may be ordered to explain the sources of his property. If he cannot prove that the sources are legitimate, the part that exceeds his lawful income shall be regarded as illegal gains, and he shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention, and the part of property that exceeds his lawful income shall be recovered.

Any State functionary shall, in accordance with State regulations, declare to the State his bank savings outside the territory of China. Whoever has a relatively large amount of such savings and does not declare them to the State shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention; if the circumstances are relatively minor, he shall be given administrative sanctions at the discretion of his work unit or the competent authorities at a higher level.

Article 396 Where a State organ, State-owned company, enterprise, institution or people's organization, in violation of State regulations and in the name of the unit, divides up State-owned assets in secret among all the individuals of the unit, if the amount involved is relatively large, the persons who are directly in charge and the other persons who are directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the amount involved is huge,, they shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.

Any judicial organ or administrative law-enforcing organ that, in violation of State regulations and in the name of the organ, divides up in secret the fines or confiscated money or property, which should be turned over to the State, among all the individuals of the organ shall be punished in accordance with the provisions of the preceding paragraph.

## Chapter IX Crimes of Dereliction of Duty

Article 397 Any functionary of a State organ who abuses his power or neglects his duty, thus causing heavy losses to public money or property or the interests of the State and the people, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years, except as otherwise specifically provided in this Law.

Any functionary of a State organ who engages in malpractice for personal gain and commits the crime mentioned in the preceding paragraph shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years, except as otherwise specifically provided in this Law.

Article 398 Any functionary of a State organ who, in violation of the provisions of the Law on Guarding State Secrets, intentionally or negligently divulges State secrets, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Any person who is not a functionary of a State organ commits the crime mentioned in the preceding paragraph shall, in the light of the circumstances, be punished in accordance with the provisions of the preceding paragraph.

Article 399 Any judicial officer who, bending the law for selfish ends or twisting the law for a favor, subjects to investigation for criminal responsibility a person he knows to be innocent or intentionally protects from investigation for criminal responsibility a person he knows to be guilty or, intentionally running counter to the facts and law, twists the law when rendering judgments or orders in criminal proceedings shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years.

Whoever, in civil or administrative proceedings, intentionally runs counter to the facts and law and twists the law when rendering judgments or orders, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years.

Any judicial officer who takes a bribe and bends the law and commits any act mentioned in the preceding two paragraphs, which also constitutes a crime as provided for in Article 385 of this Law, shall be convicted and punished in accordance with the provisions for a heavier punishment.

Article 400 Any judicial officer who, without authorization, releases a criminal suspect, a defendant or a criminal held in custody shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years.

Any judicial officer who, because of his gross neglect of duty, makes it possible for a criminal suspect, a defendant or a criminal held in custody to escape, if the consequences are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.



Article 401 Any judicial officer who, engaging in malpractices for personal gain, grants commutation of punishment, parole or temporary execution of the sentence outside prison to a criminal who does not meet the conditions for it shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 402 Any administrative law-enforcing officer who, engaging in malpractices for personal gain, does not transfer a person that should be transferred to a judicial organ according to law to be investigated for criminal responsibility, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the consequences are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 403 Any functionary of a relevant competent department of the State who, engaging in malpractices for personal gain and abusing his power, approves an application for the incorporation and registration of a company or an application for the issue and listing of shares or bonds submitted by a company that does not meet the conditions provided by law, thus causing heavy losses to public money or property and the interests of the State and the people, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Where a department at a higher level compels a registration office and its staff member to commit the acts mentioned in the preceding paragraph, the leading members of the department who are directly responsible for the offence shall be punished in accordance with the provisions of the preceding paragraph.

Article 404 Any tax official who, engaging in malpractices for personal gain, fails to collect or undercollects the tax payable, thus causing heavy losses to the revenue of the State, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if especially heavy losses are caused, he shall be sentenced to fixed-term imprisonment of not less than five years.

Article 405 Any tax official who, in violation of the provisions of law and administrative rules and regulations, engages in malpractices for personal gain in selling invoices, offsetting the tax payable and making tax refund for exports, thus causing heavy losses to the interests of the State, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if especially heavy losses are caused to the interests of the State, he shall be sentenced to fixed-term imprisonment of not less than five years.

Any functionaries of other State organs who, in violation of State regulations, engage in malpractices for personal gain in providing certificates for exports tax refund such as the declaration forms for exports and the verification and writing off documents for export proceeds, thus causing heavy losses to the interests of the State, shall be punished in accordance with the provisions of the preceding paragraph.

Article 406 Any functionary of a State organ who, in concluding or performing a contract, is defrauded as a result of his gross neglect of duty, thus causing heavy losses to the interests of the State, shall be sentenced to fixed-term imprisonment of not more than three years or criminal

detention; if especially heavy losses are caused to the interests of the State, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 407 Any functionary of a competent forestry department who, in violation of the provisions of the Forestry Law, issues forest tree felling licenses in excess of the approved annual felling quotas or, in violation of the regulations, arbitrarily issues forest tree felling licenses, if to such an extent as to cause serious damage to the forest, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Article 408 Any functionary of a State organ who is responsible for environmental protection, supervision and control, through his gross neglect of duty, causes a serious environmental pollution accident, which results in heavy losses of public or private property or the grave consequences of injuries or deaths of persons, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Article 409 Any functionary of an administrative department for public health who is engaged in prevention and treatment of infectious diseases, through his gross neglect of duty, causes the spread or epidemic of an infectious disease, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Article 410 Any functionary of a State organ who, engaging in malpractices for personal gain, violating the law and regulations on land administration and abusing his power, illegally approves the requisition or occupation of land or illegally transfers at low prices the right to the use of State-owned land, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if especially heavy losses are caused to the interests of the State or the collective, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 411 Any Customs officer who, engaging in malpractices for personal gain, connives at smuggling, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years.

Article 412 Any officer of the department in charge of commodity inspection at the national or local level who, engaging in malpractices for personal gain, falsifies inspection results, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the consequences are serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years.

The officer as mentioned in the preceding paragraph who, through his gross neglect of duty, fails to inspect the commodities that should be inspected, delays the inspection or the issuance of a certificate or issues a false certificate, thus causing heavy losses to the interests of the State, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Article 413 Any officer of an animal and plant quarantine organ who, engaging in malpractices for personal gain, forges a quarantine result, shall be sentenced to fixed-term imprisonment of not

more than five years or criminal detention; if the consequences are serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years.

Any officer as mentioned in the preceding paragraph who, through his gross neglect of duty, fails to conduct quarantine inspection of the items that should be inspected, delays the performance of quarantine inspection or the issuance of certificates, or issues false certificates, thus causing heavy losses to the interests of the State, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Article 414 Any functionary of a State organ who, being responsible for investigating the offences such as production and sale of fake or substandard commodities, engages in malpractices for personal gain and does not perform his duty of investigation as is required by law, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Article 415 Any functionary of a State organ who is in charge of handling passports, visa or other exit or entry certificates, knowingly grants an exit or entry certificate to a person attempting to illegally cross the national (frontier) border or, a functionary of a State organ such as the frontier authorities or a Customs office knowingly allows a person illegally crossing the national (frontier) border to pass shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 416 Any functionary of a State organ who is charged with the functions and responsibilities to rescue a woman or child who is abducted, sold or kidnapped fails to do so on receiving a request for rescue by the victim or by his or her family members or on receiving a report thereon made by any other person, thus causing serious consequences, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Any functionary of a State organ charged with the said functions and responsibilities who, by taking advantage of his office, hinders the rescue effort shall be sentenced to fixed-term imprisonment of not less than two years but not more than seven years; if the circumstances are relatively minor, he shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention.

Article 417 Any functionary of a State organ, charged with the functions and responsibilities to investigate and prohibit criminal activities, who divulges information or provides convenience to criminals so as to help them escape punishment shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Article 418 Any functionary of a State organ who engages in malpractices for personal gain in recruiting public servants or students, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Article 419 Any functionary of a State organ who, through his gross neglect of duty, causes damage to or losses of precious cultural relics, if the consequences are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

## Chapter X Crimes of Servicemen's Transgression of Duties

Article 420 Any act committed by a serviceman in transgression of his duties, an act that endangers the military interests of the State and should therefore be subjected to criminal punishment in accordance with law, constitutes a crime of a serviceman's transgression of duties.

Article 421 Any serviceman who disobeys an order during wartime, thereby jeopardizing a military operation, shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; if heavy losses are caused to a battle or campaign, he shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death.

Article 422 Any serviceman who intentionally conceals or makes a false report about the military situation, refuses to convey a military order or conveys a false military order, thereby jeopardizing a military operation, shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; if heavy losses are caused to a battle or campaign, he shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death.

Article 423 Any serviceman who cares for nothing but saving his skin on the battlefield voluntarily lays down his arms and surrenders to the enemy shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment.

Any serviceman who, after surrendering to the enemy, works for the enemy shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death.

Article 424 Any serviceman who deserts from the battlefield shall be sentenced to fixed-term imprisonment of not more than three years; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; if heavy losses are caused to a battle or campaign, he shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death.

Article 425 Any person in command or on duty who leaves his post without permission or neglects his duties, thereby causing serious consequences, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Whoever in wartime commits the crime mentioned in the preceding paragraph shall be sentenced to fixed-term imprisonment of not less than five years.

Article 426 Whoever, by violence or threat, obstructs a commander or a person on duty from performing his duties shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years; if serious injury or death is caused to a person or if there are other especially serious circumstances involved, he shall be sentenced to life imprisonment or death. The punishment for such a crime committed during wartime shall be heavier than in peacetime.

Article 427 Any officer who abuses his power and instigates his subordinates to act in transgression of their duties, thereby causing serious consequences, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years.

Article 428 Any commander who disobeys an order, or flinches before a battle or is inactive in a military operation, thereby causing serious consequences, shall be sentenced to fixed-term imprisonment of not more than five years; if heavy losses are caused to a battle or campaign or if there are other especially serious circumstances involved, he shall be sentenced to fixed-term imprisonment of not less than five years.

Article 429 Any commander on a battlefield who is in a position to rescue the neighbourly forces he knows are in a critical situation but does not do so upon request, thus causing heavy losses to the latter, shall be sentenced to fixed-term imprisonment of not more than five years.

Article 430 Any serviceman who, in performing his duties, leaves his post without permission or defects from China or does so when being outside of the country, thus jeopardizing the military interests of the State, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years.

Any serviceman who, piloting an aircraft or a vessel, defects, or if there are other especially serious circumstances involved, shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death.

Article 431 Whoever, by means of stealing, spying or buying, illegally obtains military secrets shall be sentenced to fixed-term imprisonment of not more than five years; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years.

Whoever steals, spies into or buys military secrets for or illegally offers such secrets to the agencies, organizations or individuals outside the territory of China shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death.

Article 432 Whoever, in violation of the law and regulations on protection of State secrets, intentionally or negligently divulges military secrets, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the

circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years.

Whoever during wartime commits the crime mentioned in the preceding paragraph shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment.

Article 433 Whoever during wartime fabricates rumors to mislead others and shake the morale of troops shall be sentenced to fixed-term imprisonment of not more than three years; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Whoever colludes with the enemy to fabricate rumors so as to mislead others and shake the morale of troops shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment; if the circumstances are especially serious, he may be sentenced to death.

Article 434 Whoever during wartime injures himself in order to evade his military obligation shall be sentenced to fixed-term imprisonment of not more than three years; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 435 Whoever, in violation of the military service law, deserts from the armed forces, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Whoever during wartime commits the crime mentioned in the preceding paragraph shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 436 Whoever violates the regulations on the use of weapons and equipment, if the circumstances are serious and an accident leading to serious injury or death of another person occurs due to his neglect of duty, or if there are other serious consequences, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 437 Whoever in violation of the regulations on control of weapons and equipment, alters without authorization the use of weapons and equipment allocated, if the consequences are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years.

Article 438 Whoever steals or forcibly seizes weapons, equipment or military supplies shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death.

Whoever steals or forcibly seizes firearms, ammunition or explosives shall be punished in accordance with the provisions of Article 127 of this Law.

Article 439 Whoever illegally sells or transfers weapons or equipment of the armed forces shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years; if a large amount of weapons or equipment is sold or transferred or if there are other especially serious circumstances involved, he shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death.

Article 440 Whoever, in violation of an order, abandons weapons or equipment shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if he abandons important or a large amount of weapons or equipment or if there are other serious circumstances involved, he shall be sentenced to fixed-term imprisonment of not less than five years.

Article 441 Whoever loses weapons or equipment and fails to report the matter immediately, or if there are other serious circumstances involved, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

Article 442 Where the real estate of the armed forces is sold or transferred in violation of the regulations, if the circumstances are serious, the persons who are directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are especially serious, they shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years.

Article 443 Any person who abuses his power and maltreats a subordinate, if the circumstances are so flagrant that the victim is seriously injured or if there are other serious consequences, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if he causes death of the victim, he shall be sentenced to fixed-term imprisonment of not less than five years.

Article 444 Where a wounded or sick serviceman is deliberately abandoned on a battlefield, if the circumstances are flagrant, the persons who are directly responsible for the offence shall be sentenced to fixed-term imprisonment of not more than five years.

Article 445 Whoever, being charged with the duty of saving and treating servicemen during wartime, refuses to do so to a serviceman who, though critically sick or wounded, can be saved or treated, he shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if he causes serious disability or death of the sick or wounded serviceman or if there are other serious circumstances involved, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years.

Article 446 Any serviceman who, during wartime, cruelly injures innocent residents in an area of military operation or plunders their money or property shall be sentenced to fixed-term imprisonment of not more than five years; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death.

Article 447 Whoever sets free a prisoner of war without authorization shall be sentenced to fixed-term imprisonment of not more than five years; if he, without authorization, sets free an important prisoner of war or a number of prisoners of war or if there are other serious circumstances involved, he shall be sentenced to fixed-term imprisonment of not less than five years.

Article 448 Whoever maltreats a prisoner of war, if the circumstances are flagrant, shall be sentenced to fixed-term imprisonment of not more than three years.

Article 449 If during wartime a serviceman is sentenced to fixed-term imprisonment of not more than three years for a crime he commits and is granted suspension of sentence because he presents no real danger, he may be allowed to atone for his crime by performing meritorious deeds. If he truly performs meritorious deeds, the original sentence may be rescinded and he shall not be regarded as a criminal.

Article 450 This Chapter shall apply to officers, civilian staff, soldiers in active service and cadets with military status of the Chinese People's Liberation Army, police officers, civilian staff and soldiers in active service and cadets with military status of the Chinese People's Armed Police, and reservists and other persons performing military tasks.

Article 451 The word "wartime" as used in this Law means the time when the State declares the state of war, the armed forces receive tasks of operations or when the enemy launches a surprise attack.

The time when the armed forces execute martial-law tasks or cope with emergencies of violence shall be regarded as wartime.

#### Supplementary Provisions

Article 452 This Law shall go into effect as of October 1, 1997.

The regulations, supplementary provisions and decisions enacted by the Standing Committee of the National People's Congress, as listed in Appendix I of this Law, which have been incorporated into this Law or are no longer applicable, shall be invalidated as of the date this Law goes into effect.

The supplementary provisions and decisions enacted by the Standing Committee of the National People's Congress, as listed in Appendix II of this Law, shall be retained. Among them the provisions on administrative penalty and administrative measures shall remain in force; however, since the provisions on criminal responsibility have been incorporated into this Law, the relevant provisions of this Law shall prevail as of the date this Law goes into effect.

#### Appendix I



The following regulations, supplementary provisions and decisions enacted by the Standing Committee of the National People's Congress which have been incorporated into this Law or are no longer applicable shall be invalidated as of the date this Law goes into effect:

1. Interim Regulations of the People's Republic of China on Punishment of Servicemen Who Commit Crimes Contrary to Their Duties
2. Decision Regarding the Severe Punishment of Criminals Who Seriously Sabotage the Economy
3. Decision Regarding the Severe Punishment of Criminals Who Seriously Endanger Public Security
4. Supplementary Provisions Concerning the Punishment of the Crimes of Smuggling
5. Supplementary Provisions Concerning the Punishment of the Crimes of Embezzlement and Bribery
6. Supplementary Provisions Concerning the Punishment of the Crimes of Divulging State Secrets
7. Supplementary Provisions Concerning the Punishment of the Crimes of Catching or Killing Precious and Endangered Species of Wildlife Under Special State Protection
8. Decision Regarding the Punishment of the Crimes of Desecrating the National Flag and the National Emblem of the People's Republic of China
9. Supplementary Provisions Regarding the Punishment of the Crime of Excavating and Robbing Sites of Ancient Culture or Ancient Tombs
10. Decision Regarding the Punishment of the Criminals Engaged in Aircraft Hijacking
11. Supplementary Provisions Regarding Punishing Crimes of Counterfeiting Registered Trademarks
12. Decision on Punishment of the Crimes of Production and Sale of Fake or Substandard Commodities
13. Decision Regarding the Punishment of the Crimes of Infringement of Copyright
14. Decision Concerning Punishment of Crimes Against the Company Law
15. Decision Regarding the Handling of Criminals Undergoing Reform Through Labor and Persons Undergoing Rehabilitation Through Labor Who Escape or Commit New Crimes

## Appendix II

The following supplementary provisions and decisions enacted by the Standing Committee of the National People's Congress shall be retained. Among them the provisions on administrative

penalty and administrative measures shall remain in force; since the provisions on criminal responsibility have been incorporated into this Law, the relevant provisions of this Law shall prevail as of the date this Law goes into effect:

1. Decision on the Prohibition Against Narcotic Drugs
2. Decision on the Punishment of Criminals Who Smuggle, Produce, Sell or Disseminate Pornographic materials
3. Decision on the Strict Prohibition Against Prostitution and Whoring
4. Decision Regarding the Severe Punishment of Criminals Who Abduct and Traffic in or Kidnap Women or Children
5. Supplementary Provisions Regarding the Imposition of Punishment in Respect of Offences of Tax Evasion and Refusal to Pay Tax
6. Supplementary Provisions on the Severe Punishment of the Crimes of Organizing or Transporting Other Person(s) To illegally cross the National Border (Frontier)
7. Decision on Punishment of Crimes of Disrupting Financial Order
8. Decision on Punishing Crimes of Falsely Making Out, Forging or Illegally Selling Special Invoices for Value-added Tax

# **Prison Law of the People's Republic of China**

Adopted at the 11th Meeting of the Standing Committee of the Eighth National People's Congress on December 29, 1994 and promulgated by Order No.35 of the President of the People's Republic of China on December 29, 1994

## Contents

### Chapter I General Provisions

### Chapter II Prison

### Chapter III Execution of Criminal Punishments

#### Section 1 Putting in Prison

#### Section 2 Handling of Petitions, Complaints and Accusations Made by Prisoners

#### Section 3 Execution Outside Prison

#### Section 4 Commutation of Punishment and Release on Parole

#### Section 5 Release and Resettlement

### Chapter IV Prison Administration

#### Section 1 Separate Custody and Separate Control

#### Section 2 Guard

#### Section 3 Use of Restraint Implements and Weapons

#### Section 4 Correspondence and Meeting with Visitors

#### Section 5 Life and Health

#### Section 6 Rewards and Punishments

#### Section 7 Handling of Crimes Committed by Prisoners During the Term of Imprisonment

### Chapter V Education and Reform of Prisoners

### Chapter VI Education and Reform of Juvenile Delinquents

### Chapter VII Supplementary Provisions

### Chapter I General Provisions

Article 1 This Law is formulated in accordance with the Constitution for the purpose of correctly executing criminal punishments, punishing and reforming prisoners, preventing and reducing crimes.

Article 2 A prison is an organ of the State for executing criminal punishments.

Criminal punishments of prisoners sentenced to death penalty with a two-year suspension of execution, life imprisonment, or fixed-term imprisonment shall be executed in prisons under the Criminal Law and the Criminal Procedure Law.

Article 3 A prison shall, with regard to prisoners, implement the principle of combining punishment with reform and combining education with labour, in order to transform them into law-abiding citizens.

Article 4 A prison shall exercise supervision and control over prisoners according to law, and shall, in accordance with the needs of reforming prisoners, organize prisoners to engage in productive labour and conduct ideological, cultural and technical education among prisoners.

Article 5 Activities in prison administration, execution of criminal punishments, and education and reform of prisoners conducted according to law by the people's police of a prison shall be protected by law.

Article 6 A people's procuratorate shall exercise supervision in accordance with the law over the legality of activities conducted by prisons in execution of criminal punishments.

Article 7 Human dignity of a prisoner shall not be humiliated, and his personal safety, lawful properties, and rights to defence, petition, complaint and accusation as well as other rights which have not been deprived of or restricted according to law shall not be violated.

A prisoner must strictly observe laws, regulations, and rules and discipline of the prison, subject himself to control, accept education and take part in labour.

Article 8 The State shall ensure the expenditures of a prison for the reform of prisoners. The prisons' expenditures for the people's police, for the reform of prisoners, for the living expenses of prisoners, for the administration and installations of the prison, and other special expenses shall be included into the State budget.

The State shall provide production facilities and production expenses necessary for prisoners to do labour.

Article 9 Lands, mineral resources and other natural resources used by a prison according to law as well as properties of a prison shall be protected by law; no organizations or individuals shall seize or undermine them.

Article 10 The department of judicial administration under the State Council shall be in charge of the work of prisons in the whole country.

## Chapter II Prison

Article 11 The establishment, abolition or move of a prison shall be subject to the approval of the department of judicial administration under the State Council.

Article 12 A prison shall install one warden, several deputy wardens, and, in light of the actual needs, set up necessary working organs and provide other administrative personnel.

The administrative personnel in a prison are the people's police.

Article 13 The people's police of a prison shall strictly abide by the Constitution and the law, be loyal to their duties, enforce the law impartially, strictly observe discipline and be honest and upright.

Article 14 The people's police of a prison shall not commit any of the following acts: (1) to demand, accept or seize money or goods from prisoners or their relatives;

(2) to release a prisoner without authorization or through dereliction of duty to cause a prisoner to flee from the prison ;

(3) to use torture to coerce a confession, or to use corporal punishment, or to maltreat a prisoner;

(4) to humiliate the human dignity of a prisoner;

(5) to beat or connive at others to beat a prisoner;

(6) to utilize a prisoner to provide labour services for personal gains;

(7) to privately deliver a letter or an article for a prisoner in violation of regulations;

(8) to illegally surrender the functions and powers to supervise and control prisoners to another person; or

(9) other law-breaking acts.

If the people's police of a prison commit any act specified in the preceding paragraph and the case constitutes a crime, the offenders shall be investigated for criminal responsibility; if the case does not constitute a crime, the offenders shall be given administrative sanctions.

## Chapter III Execution of Criminal Punishments

### Section 1 Putting in Prison

Article 15 With respect to a criminal who is sentenced to death penalty with a two-year suspension of execution, life imprisonment or fixed-term imprisonment, the people's court shall serve the notice of execution of the sentence and the written judgment on the public security organ where the criminal is in custody. The public security organ shall hand the criminals over to a prison for execution of the punishment within one month from the date of receiving the notice of execution of the sentence and the written judgment.

Before a criminal is handed over for execution of the criminal punishment, if the remaining term of his sentence is not more than one year, the criminal punishment shall be executed by the detention house instead.

Article 16 A people's court shall, in handing over a criminal for execution of the criminal punishment, serve on the prison a copy of the bill of prosecution from the people's procuratorate together with the written judgment, the notice of execution and the registration form of closing the case from the people's court. The prison shall not put the criminal in prison without receiving the above-mentioned documents; if such documents are incomplete or have errors in the records, the people's court which passed the effective judgment shall, without delay, make them complete or correct; if any of the above-mentioned circumstances may lead to wrongful imprisonment of a person, the prison shall not accept him.

Article 17 A prison shall give physical examination to the criminals who are handed over for execution of their criminal punishments. A criminal sentenced to life imprisonment or fixed-term imprisonment may, after physical examination, temporarily not be put in prison under either of the following circumstances:

- (1) if a criminal is seriously ill and needs to be released on parole for medical treatment; or
- (2) if a criminal is a pregnant woman or a woman who is breast-feeding her own baby.

With respect to a criminal temporarily not to be put in prison as provided in the preceding paragraph, the decision on temporary execution outside prison shall be made by the people's court which handed the criminal over for the execution. With respect to any such criminal whose temporary execution of the sentence outside prison constitutes a danger to the society, he shall be put in prison. If a criminal temporarily serves his sentence outside prison, the public security organ in the place of the criminal's residence shall execute the criminal punishment. After the circumstances specified in the preceding paragraph under which a criminal is temporarily not put in prison disappeared, the criminal who has not completed the execution of his original term of sentence shall be handed over to a prison for imprisonment by the public security organ.

Article 18 When a criminal is put in prison, his or her body and the articles brought with him or her shall strictly be checked. The non-daily necessities shall be taken care of by the prison for the criminal or with the agreement of the criminal be returned to his or her families, and contraband goods shall be confiscated.

A female criminal shall be checked by a people's policewoman.

Article 19 A criminal may not bring his or her child with him or her to serve sentence in prison.

Article 20 After a criminal is put in prison, the prison shall inform the criminal's family members. A written notice shall be sent out within five days from the date when the criminal is put in prison.

## Section 2 Handling of Petitions, Complaints and Accusations Made by Prisoners

Article 21 If a prisoner is not satisfied with the effective judgment, he may file a petition. A people's procuratorate or a people's court shall without delay handle the petitions filed by prisoners.

Article 22 A prison shall without delay handle the complaints or accusations made by prisoners, or transfer the above material to a public security organ or a people's procuratorate for handling. The public security organ or the people's procuratorate shall inform the prison of the result of its handling.

Article 23 A prison shall transfer without delay the petitions, complaints and accusations made by prisoners and shall not withhold them.

Article 24 In the course of execution of the criminal punishment, if a prison believes on the basis of a prisoner's petition that the judgment may be wrongfully made, it shall refer the matter to a people's procuratorate or a people's court for handling. The people's procuratorate or the people's court shall notify the prison of the result of its handling within six months from the date of receiving the prison's written recommendation for handling.

## Section 3 Execution Outside Prison

Article 25 If a prisoner sentenced to life imprisonment or fixed-term imprisonment serving his sentence in prison complies with the conditions for execution outside prison as provided by the Criminal Procedure Law, he may be permitted to temporarily serve his sentence outside prison.

Article 26 For temporary execution outside prison, a written recommendation shall be made by a prison and submitted for approval to the administrative organ of prisons of the province, autonomous region or municipality directly under the Central Government. The organ granting the approval shall notify the public security organ and the people's court making the original judgment of the decision on the approval of the temporary execution outside prison, and send a duplicate of its decision to the people's procuratorate.

If a people's procuratorate considers that it is improper to apply temporary execution outside prison to the prisoner, the people's procuratorate shall send its written opinions within one month from the date of receiving the notice to the organ that approved the temporary execution outside prison. The said organ shall, upon receiving the written opinions from the people's procuratorate, conduct forthwith reexamination and re-verification of its decision.

Article 27 If a prisoner temporarily serves his sentence outside prison, the public security organ in the place of the prisoner's residence shall execute his sentence. The prison that originally held the prisoner in custody shall promptly inform such public security organ of the prisoner's performances of reform in prison.

Article 28 After the circumstances causing temporary execution outside prison disappeared, if the prisoner has not completed his term of sentence, the public security organ in charge of the execution shall without delay inform the prison to put the prisoner back into prison; if a prisoner has completed his term of sentence, the prison that originally held the prisoner in custody shall handle the formalities for the release. If a prisoner died during the period of temporary execution outside prison, the public security organ shall, without delay, inform the prison that originally held the prisoner in custody about the death.

#### Section 4 Commutation of Punishment and Release on Parole

Article 29 If a prisoner sentenced to life imprisonment or fixed-term imprisonment has shown true repentance or rendered meritorious service during the term of imprisonment, his sentence may be commuted on the basis of the result of the assessment made by the prison. If a prisoner has rendered one of the following major meritorious services, his sentence shall be commuted:

- (1) having stopped a grave criminal activity of another person;
- (2) having reported a grave criminal activity inside or outside prison which has been ascertained to be true;
- (3) having made an invention or a major technical innovation;
- (4) having risked his or her life to save others in daily production or life;
- (5) having made remarkable performances in fighting against natural calamities or in avoiding or removing grave accidents; or
- (6) having made other major contributions to the State or the society.

Article 30 A recommendation for commutation of a sentence shall be made by a prison to a people's court. The people's court shall within one month from the date of receiving the written recommendation examine it and make a ruling thereon; if the case is complicated or the circumstances are special, the said period may be extended by one month. A duplicate of the ruling on commutation of a sentence shall be sent to the people's procuratorate.

Article 31 Where a prisoner sentenced to death penalty with a two-year suspension of execution conforms with the conditions for commutation to life imprisonment or fixed-term imprisonment as provided by the law during the period of suspension of execution of his death penalty, the prison holding the prisoner in custody shall make a timely recommendation for commutation upon expiration of the two-year suspension of execution and report it first to the administrative organ of prisons of the province, autonomous region or the municipality directly under the Central Government for examination and verification, and then submit the matter to the higher people's court for a ruling.

Article 32 Where a prisoner sentenced to life imprisonment or fixed-term imprisonment conforms to the conditions for release on parole as provided by the law, the prison shall, on the basis of the result of its assessment, make a recommendation for release on parole to the people's court. The people's court shall, within one month from the date of receiving the written recommendation,



examine it and make a ruling thereon; if the case is complicated or the circumstances are special, the said period may be extended by one month. A duplicate of the ruling on parole shall be sent to the people's procuratorate.

Article 33 Where a people's court has made a ruling on parole, the prison shall parole the prisoner as scheduled and issue him a certificate of parole.

A parolee shall be supervised by a public security organ. Where a parolee during the period of parole commits any acts in violation of laws, administrative rules and regulations or the regulations of the public security department under the State Council on the supervision and control of parolees, if such acts do not constitute a new crime, the public security organ may make a written recommendation for the cancellation of parole to the people's court. The people's court shall within one month from the date of receiving the written recommendation examine it and make a ruling thereon. Where the people's court has ruled to cancel the parole, the parolee shall be handed over to the prison for custody by the public security organ.

Article 34 If a prisoner does not satisfy the conditions for commutation or parole as provided by the law, the prisoner shall not be commuted or paroled on any ground. If a people's procuratorate considers that a ruling on commutation or parole made by a people's court is improper, it may lodge a protest within the time limit specified by the Criminal Procedure Law. With respect to the case protested by the people's procuratorate, the people's court shall try it anew.

## Section 5 Release and Resettlement

Article 35 If a prisoner has completed service of his sentence, the prison shall release him as scheduled and issue him a certificate of release.

Article 36 After a prisoner is released, the public security organ shall make residence registration for him on the strength of his certificate of release.

Article 37 With respect to a person released after serving his sentence, the local people's government shall assist him in resettling down.

If a person released after serving his sentence has lost his ability to do labour, and has no statutory supporters or basic source of income, the local people's government shall offer him relief.

Article 38 A person released after serving his sentence shall enjoy equal rights with other citizens in accordance with the law.

## Chapter IV Prison Administration

### Section 1 Separate Custody and Separate Control

Article 39 A prison shall practise separate custody and separate control with respect to male adult prisoners, female adult prisoners and juvenile delinquents. In respect of the reform of juvenile

delinquents and female prisoners, special consideration shall be given to their physiological and psychological characteristics.

A prison shall, with respect to prisoners, carry out separate custody and varied control on the basis of their types of crimes and punishments, terms of sentences and performances of reform.

Article 40 Female prisoners shall be under the direct control of people's policewomen.

## Section 2 Guard

Article 41 The people's armed police forces shall be in charge of the armed guard of prisons. The specific measures shall be prescribed by the State Council and the Central Military Commission.

Article 42 If a prison discovers that a prisoner in custody has escaped, the prison shall capture him as soon as possible. If the prison can not immediately capture the escaped prisoner, it shall notify the public security organ without delay. The public security organ shall be responsible for the pursuit and capture of the escaped prisoner, and the prison shall closely coordinate with the public security organ.

Article 43 A prison shall set up guard installations in accordance with the needs of supervision and control. The guard segregation zone around a prison shall be delimited. No one shall, without permission, enter into such zone.

Article 44 State organs, public organizations, enterprises, institutions and grass-roots organizations in the neighbourhood of a prison or its operation areas shall assist the prison in its security work.

## Section 3 Use of Restraint Implements and Weapons

Article 45 Under any of the following circumstances, a prison may use restraint implements:

- (1) if a prisoner commits any acts of escape;
- (2) if a prisoner commits any acts of violence;
- (3) if a prisoner is on the way of escort; or
- (4) if a prisoner commits other dangerous acts against which it is necessary to take precautions.

After the circumstances specified in the preceding paragraph disappeared, restraint implements shall not be used.

Article 46 Personnel on duty of the people's police or the people's armed police forces may, under any of the following circumstances, which can not be checked without the use of weapons, use weapons in accordance with the relevant regulations of the State:

- (1) if any prisoner is assembling a crowd to make a riot or rebellion;
- (2) if any prisoner is escaping or resisting arrest;
- (3) if any prisoner is committing physical assault or destruction with a lethal weapon or other dangerous articles to endanger the safety of another person's life or property;

(4) if any prisoner is being seized and rescued by force; or

(5) if any prisoner is seizing a weapon by force.

Personnel who have used weapons shall report the situations in accordance with the relevant regulations of the State.

#### Section 4 Correspondence and Meeting with Visitors

Article 47 A prisoner may, during the service of his sentence, correspond with others, but their correspondence shall be examined by the prison. If the prison discovers that the contents of a letter present a hindrance to the reform of the prisoner, the prison may detain the letter. Letters from a prisoner to the higher authorities of the prison or to the judicial organs shall be free from examination.

Article 48 A prisoner may, in accordance with the relevant regulations, meet with his relatives and guardians during the service of his sentence.

Article 49 Goods or money to be received by a prisoner shall be subject to the approval and examination of the prison. Section 5 Life and Health

Article 50 The living standard of prisoners shall be measured by the quantity of material objects, and it shall be set by the State.

Article 51 The beddings and clothing of prisoners shall be uniformly rationed and provided by the prison.

Article 52 Considerations shall be given to the special habits and customs of prisoners of minority ethnic groups.

Article 53 Wards of a prison shall be firm, ventilated, possible for the natural light to come in, clean and warm.

Article 54 A prison shall set up medical organs and living and sanitary facilities, and institute regulations on the life and sanitation of prisoners. Medical and health care of prisoners shall be put into the public health and epidemic prevention programme of the area in which the prison is located.

Article 55 If a prisoner dies during imprisonment, the prison shall immediately inform the prisoner's family members, the people's procuratorate and the people's court. If a prisoner dies from a disease, the prison shall make a medical appraisal. If the people's procuratorate suspects the prison's medical appraisal, it may make an appraisal anew on the cause of the death. If the family members of the prisoner suspect the prison's medical appraisal, they may raise their suspicion to the people's procuratorate. If a prisoner dies an abnormal death, the people's procuratorate shall immediately conduct examinations and make an appraisal on the cause of the death.

#### Section 6 Rewards and Punishments

Article 56 A prison shall establish a routine check-up system for prisoners. The result of such check-ups shall be taken as the basis for awarding or punishing prisoners.

Article 57 If a prisoner is under one of the following circumstances, the prison may commend or award him, or record a merit for him:

- (1) if a prisoner observes the rules and discipline of the prison, studies hard, takes an active part in labour and shows admission of guilt and acceptance of the judgement;
- (2) if a prisoner has stopped any law-breaking or criminal activities;
- (3) if a prisoner has overfulfilled his production task;
- (4) if a prisoner has made achievements in saving on raw materials or caring for public property;
- (5) if a prisoner has achieved certain success in technical renovation or passing on his production skill;
- (6) if a prisoner has made contributions in preventing or removing a disastrous accident; or
- (7) if a prisoner has made other contributions to the State and the society.

Where a prisoner sentenced to fixed-term imprisonment is under one of the circumstances specified in the preceding paragraph, if he has served more than a half of the original term of his sentence, and has always shown good performances during imprisonment and if his leaving from the prison will no longer endanger the society, the prison may, in light of the circumstances, permit him to leave the prison for the purpose of visiting his family members or relatives.

Article 58 If a prisoner has committed one of the following acts obstructing the order of supervision and control, the prison may give him a warning, demerit-recording or solitary confinement:

- (1) assembling a crowd to make a stir and to disturb the order of the prison;
- (2) abusing or beating the people's police;
- (3) bullying other prisoners;
- (4) stealing, gambling, coming to blows, or stirring up fights and causing troubles;
- (5) refusing to do labour though he has the ability to work or being slack in work and refusing to mend his ways even after education;
- (6) escaping from doing labour by means of self-injury or self-mutilation;
- (7) intentionally violating the operation rules in productive labour or intentionally destroying tools of production; or
- (8) other acts violating the rules and discipline of the prison.

The term of solitary confinement imposed on a prisoner as stipulated by the preceding paragraph shall be from seven to fifteen days.

If a prisoner has committed an act specified in the first paragraph during the service of his sentence, and if the case constitutes a crime, he shall be investigated for criminal responsibility according to law.

#### Section 7 Handling of Crimes Committed by Prisoners During the Term of Imprisonment

Article 59 If a prisoner intentionally commits a crime during the service of his sentence, he shall be given a heavier punishment according to law.

Article 60 A criminal case committed by a prisoner in the prison shall be investigated by the prison. On the conclusion of the investigation, a recommendation for prosecution or a recommendation for exemption from prosecution written by the prison together with the case file and the evidence shall be handed over to a people's procuratorate .

#### Chapter V Education and Reform of Prisoners

Article 61 In the education and reform of prisoners, the principle of suiting education to different persons and cases and persuading prisoners through reasoning shall be implemented and the method of combining collective education with individual education and combining education by the prison with education by the society adopted.

Article 62 A prison shall carry out ideological education among prisoners in legality, morality, current situations, policies and outlook on their futures.

Article 63 A prison shall, in light of different conditions of prisoners, carry out literacy education, primary education and junior secondary education. If a prisoner has passed due examinations, the educational department shall issue him the corresponding certificate of education.

Article 64 A prison shall carry out occupational and technical education among prisoners in accordance with the needs of production in the prison and of employment after their release. If a prisoner has passed due examination and verification, the labour department shall issue him the corresponding certificate of technical grade.

Article 65 A prison shall encourage prisoners to study on their own. If a prisoner has passed due examinations, the relevant department shall issue him the corresponding certificate.

Article 66 The cultural, occupational and technical education of prisoners shall be included into the educational plan of the area where the prison is located. A prison shall have necessary educational facilities such as class-rooms and reading-rooms.

Article 67 A prison shall organize prisoners to conduct proper sport activities and cultural recreations.

Article 68 State organs, public organizations, units of armed forces, enterprises, institutions, personage of various circles and family members or relatives of prisoners shall assist prisons in doing a good job in the education and reform of prisoners.

Article 69 An able-bodied prisoner must do labour.

Article 70 A prison shall, in the light of the individual conditions of prisoners, rationally organize them to do labour so as to correct their bad habits, to cultivate their habits of working, to acquire production skills and to create conditions for employment after their release.

Article 71 With regard to the working hours of prisoners, a prison shall make reference to the State's relevant regulations on working hours; under special circumstances such as seasonal production, the working hours may be readjusted.

Prisoners shall have the right to rest on statutory festivals and holidays.

Article 72 Prisons shall, in accordance with the relevant regulations, pay remunerations to the prisoners who take part in labour, and implement relevant regulations of the State on labour protection.

Article 73 If a prisoner is injured, disabled or dead in the course of doing labour, the prison shall handle the matter with reference to relevant regulations of the State on labour insurance.

## Chapter VI Education and Reform of Juvenile Delinquents

Article 74 Criminal punishments on juvenile delinquents shall be executed in the reformatories for juvenile delinquents.

Article 75 The focus in the execution of criminal punishments on juvenile delinquents shall be on education and reform. Labour for juvenile delinquents shall conform to the characteristics of minors and its main objectives shall be to acquire an elementary education and production skills.

A prison shall coordinate with the State, society and educational institutions such as schools in providing necessary conditions for juvenile delinquents to receive compulsory education.

Article 76 If a juvenile delinquent has reached the age of 18 and the remaining term of his sentence does not exceed two years, he may still be kept in the reformatory for juvenile delinquents for the execution of the remaining term of his sentence.

Article 77 If matters relating to the control, education and reform of juvenile delinquents are not covered by this Chapter, the relevant provisions of this Law shall apply.

## Chapter VII Supplementary Provisions

Article 78 This Law shall go into effect as of the date of promulgation.

# **Administrative Procedure Law of the People's Republic of China**

Adopted at the Second Session of the Seventh National People's Congress and promulgated by Order No.16 of the President of the People's Republic of China on April 4,1989

## Contents

Chapter I General Provisions

Chapter II Scope of Accepting Cases

Chapter III Jurisdiction

Chapter IV Participants in Proceedings

Chapter V Evidence

Chapter VI Bringing a Suit and Accepting a Case

Chapter VII Trial and Judgment

Chapter VIII Execution

Chapter IX Liability for Compensation for Infringement of Rights

Chapter X Administrative Procedure Involving Foreign Interests

Chapter XI Supplementary Provisions

## Chapter I General Provisions

Article 1 Pursuant to the Constitution, this Law is enacted for the purpose of ensuring the correct and prompt handling of administrative cases by the people's courts, protecting the lawful rights and interests of citizens, legal persons and other organizations, and safeguarding and supervising the exercise of administrative powers by administrative organs in accordance with the law.

Article 2 If a citizen, a legal person or any other organization considers that his or its lawful rights and interests have been infringed upon by a specific administrative act of an administrative organ or its personnel, he or it shall have the right to bring a suit before a people's court in accordance with this Law.

Article 3 The people's courts shall, in accordance with the law, exercise judicial power independently with respect to administrative cases, and shall not be subject to interference by any administrative organ, public organization or individual.



The people's courts shall set up administrative divisions for the handling of administrative cases.

Article 4 In conducting administrative proceedings, the people's courts shall base themselves on facts and take the law as the criterion.

Article 5 In handling administrative cases, the people's courts shall examine the legality of specific administrative acts.

Article 6 In handling administrative cases, the people's courts shall, as prescribed by law, apply the systems of collegial panel, withdrawal of judicial personnel and public trial and a system whereby the second instance is the final instance.

Article 7 Parties to an administrative suit shall have equal legal positions.

Article 8 Citizens of all nationalities shall have the right to use their native spoken and written languages in administrative proceedings.

In an area where people of a minority nationality live in concentrated communities or where a number of nationalities live together, the people's courts shall conduct adjudication and issue legal documents in the language or languages commonly used by the local nationalities.

The people's courts shall provide interpretation for participants in proceedings who do not understand the language or languages commonly used by the local nationalities.

Article 9 Parties to an administrative suit shall have the right to debate.

Article 10 The people's procuratorates shall have the right to exercise legal supervision over administrative proceedings.

## Chapter II Scope of Accepting Cases

Article 11 The people's courts shall accept suits brought by citizens, legal persons or other organizations against any of the following specific administrative acts:

- (1) an administrative sanction, such as detention, fine, rescission of a license or permit, order to suspend production or business or confiscation of property, which one refuses to accept;
- (2) a compulsory administrative measure, such as restricting freedom of the person or the sealing up, seizing or freezing of property, which one refuses to accept;
- (3) infringement upon one's managerial decision-making powers, which is considered to have been perpetrated by an administrative organ;
- (4) refusal by an administrative organ to issue a permit or license, which one considers oneself legally qualified to apply for, or its failure to respond to the application;

- (5) refusal by an administrative organ to perform its statutory duty of protecting one's rights of the person and of property, as one has applied for, or its failure to respond to the application;
- (6) cases where an administrative organ is considered to have failed to issue a pension according to law;
- (7) cases where an administrative organ is considered to have illegally demanded the performance of duties; and
- (8) cases where an administrative organ is considered to have infringed upon other rights of the person and of property.

Apart from the provisions set forth in the preceding paragraphs, the people's courts shall accept other administrative suits which may be brought in accordance with the provisions of relevant laws and regulations.

Article 12 The people's courts shall not accept suits brought by citizens, legal persons or other organizations against any of the following matters:

- (1) acts of the state in areas like national defence and foreign affairs;
- (2) administrative rules and regulations, regulations, or decisions and orders with general binding force formulated and announced by administrative organs;
- (3) decisions of an administrative organ on awards or punishments for its personnel or on the appointment or relief of duties of its personnel; and
- (4) specific administrative acts that shall, as provided for by law, be finally decided by an administrative organ.

### Chapter III Jurisdiction

Article 13 The basic people's courts shall have jurisdiction as courts of first instance over administrative cases.

Article 14 The intermediate people's courts shall have jurisdiction as courts of first instance over the following administrative cases:

- (1) cases of confirming patent rights of invention and cases handled by the Customs;
- (2) suits against specific administrative acts undertaken by departments under the State Council or by the people's governments of provinces, autonomous regions or municipalities directly under the Central Government; and
- (3) grave and complicated cases in areas under their jurisdiction.

Article 15 The higher people's courts shall have jurisdiction as courts of first instance over grave and complicated administrative cases in areas under their jurisdiction.

Article 16 The Supreme People's Court shall have jurisdiction as a court of first instance over grave and complicated administrative cases in the whole country.

Article 17 An administrative case shall be under the jurisdiction of the people's court in the locality of the administrative organ that initially undertook the specific administrative act. A reconsidered case in which the organ conducting the reconsideration has amended the original specific administrative act may also be placed under the jurisdiction of the people's court in the locality of the administrative organ conducting the reconsideration.

Article 18 A suit against compulsory administrative measures restricting freedom or the person shall be under the jurisdiction of a people's court in the place where the defendant or the plaintiff is located.

Article 19 An administrative suit regarding a real property shall be under the jurisdiction of the people's court in the place where the real property is located.

Article 20 When two or more people's courts have jurisdiction over a suit, the plaintiff may have the option to bring the suit in one of these people's courts. If the plaintiff brings the suit in two or more people's courts that have jurisdiction over the suit, the people's court that first receives the bill of complaint shall have jurisdiction.

Article 21 If a people's court finds that a case it has accepted is not under its jurisdiction, it shall transfer the case to the people's court that does have jurisdiction over the case. The people's court to which the case has been transferred shall not on its own initiative transfer it to another people's court.

Article 22 If a people's court which has jurisdiction over a case is unable to exercise its jurisdiction for special reasons, a people's court at a higher level shall designate another court to exercise the jurisdiction.

If a dispute arises over jurisdiction between people's courts, it shall be resolved by the parties to the dispute through consultation. If the dispute cannot be resolved through consultation, it shall be reported to a people's court superior to the courts in dispute for the designation of jurisdiction.

Article 23 People's courts at higher levels shall have the authority to adjudicate administrative cases over which people's courts at lower levels have jurisdiction as courts of first instance; they may also transfer administrative cases over which they themselves have jurisdiction as courts of first instance to people's courts at lower level for trial.

If people's court deems it necessary for an administrative case of first instance under its jurisdiction to be adjudicated by a people's court at a higher level, it may report to such a people's court for decision.

#### Chapter IV Participants in Proceedings

Article 24 A citizen, a legal person or any other organization that brings a suit in accordance with this Law shall be a plaintiff.

If a citizen who has the right to bring a suit is deceased, his near relatives may bring the suit.

If a legal person or any other organization that has the right to bring a suit terminates, the legal person or any other organization that succeeds to its rights may bring the suit.

Article 25 If a citizen, a legal person or any other organization, brings a suit directly before a people's court, the administrative organ that undertook the specific administrative act shall be the defendant.

For a reconsidered case, if the organ that conducted the reconsideration sustains the original specific administrative act, the administrative organ that initially undertook the act shall be the defendant; if the organ that conducted the reconsideration has amended the original specific administrative act, the administrative organ which conducted the reconsideration shall be the defendant.

If two or more administrative organs have undertaken the same specific administrative act, the administrative organs that have jointly undertaken the act shall be the joint defendants.

If a specific administrative act has been undertaken by an organization authorized to undertake the act by the law or regulations, the organization shall be the defendant. If a specific administrative act has been undertaken by an organization as entrusted by an administrative organ, the entrusting organ shall be the defendant.

If an administrative organ has been abolished, the administrative organ that carries on the exercise of functions and powers of the abolished organ shall be the defendant.

Article 26 A joint suit shall be constituted when one party or both parties consist of two or more persons and the administrative cases are against the same specific administrative act or against the specific administrative acts of the same nature and the people's court considers that the cases can be handled together.

Article 27 If any other citizen, legal person or any other organization has interests in a specific administrative act under litigation, he or it may, as a third party, file a request to participate in the proceedings or may participate in them when so notified by the people's court.

Article 28 Any citizen with no capacity to take part in litigation shall have one or more legal representatives who will act on his behalf in a suit. If the legal representatives try to shift their responsibilities onto each other, the people's court may appoint one of them as the representative of the principal in litigation.

Article 29 Each party or legal representative may entrust one or two persons to represent him in litigation.

A lawyer, a public organization, a near relative of the citizen bringing the suit, or a person recommended by the unit to which the citizen bringing the suit belongs or any other citizen approved by the people's court may be entrusted as an agent ad litem.

Article 30 A lawyer who serves as an agent ad litem may consult materials pertaining to the case in accordance with relevant provisions, and may also investigate among and collect evidence from the organizations and citizens concerned. If the information involves state secrets or the private affairs of individuals, he shall keep it confidential in accordance with relevant provisions of the law.

With the approval of the people's court, parties and other agents ad litem may consult the materials relating to the court proceedings of the case, except those that involve state secrets or the private affairs of individuals.

## Chapter V Evidence

Article 31 Evidence shall be classified as follows:

- (1) documentary evidence;
- (2) material evidence;
- (3) audio-visual material;
- (4) testimony of witnesses;
- (5) statements of the parties;
- (6) expert conclusions; and
- (7) records of inquests and records made on the scene.

Any of the above-mentioned evidence must be verified by the court before it can be taken as a basis for ascertaining a fact.

Article 32 The defendant shall have the burden or proor for the specific administrative act he has undertaken and shall provide the evidence and regulatory documents in accordance with which the act has been undertaken.

Article 33 In the course of legal proceedings, the defendant shall not by himself collect evidence from the plaintiff and witnesses.

Article 34 A people's court shall have the authority to request the parties to provide or supplement evidence.

A people's court shall have the authority to obtain evidence from the relevant administrative organs, other organizations or citizens.

Article 35 In the course of legal proceedings, when a people's court considers that an expert evaluation for a specialized problem is necessary, the expert evaluation shall be made by a expert evaluation department as specified by law. In the absence of such a department, the people's court shall designate one to conduct the expert evaluation.

Article 36 Under circumstances where there is a likelihood that evidence may be destroyed or lost or difficult to obtain later on, the participants in proceedings may apply to the people's court for the evidence to be preserved. The people's court may also on its own initiative take measures to preserve such evidence.

## Chapter VI Bringing a Suit and Accepting a Case

Article 37 A citizen, a legal person or any other organization may, within the scope of cases acceptable to the people's courts, apply to an administrative organ at the next higher level or to an administrative organ as prescribed by the law or regulations for reconsideration, anyone who refuses to accept the reconsideration decision may bring a suit before a people's court; a citizen, a legal person or any other organization may also bring a suit directly before a people's court.

In circumstances where, in accordance with relevant provisions of laws or regulations, a citizen, a legal person or any other organization shall first apply to an administrative organ for reconsideration and then bring a suit before a people's court, if he or it refuses to accept the reconsideration decision, the provisions of the laws or regulations shall apply.

Article 38 If a citizen, a legal person or any other organization applies to an administrative organ for reconsideration, the organ shall make a decision within two months from the day of the receipt of the application, except as otherwise provided for by law or regulations.

Anyone who refuses to accept the reconsideration decision may bring a suit before a people's court within 15 days from the day of the receipt of the reconsideration decision. If the administrative organ conducting the reconsideration fails to make a decision on the expiration of the time limit, the applicant may bring a suit before a people's court within 15 days after the time limit for reconsideration expires, except as otherwise provided for by law.

Article 39 If a citizen, a legal person or any other organization brings a suit directly before a people's court, he or it shall do so within three months from the day when he or it knows that a specific administrative act has been undertaken, except as otherwise provided for by law.

Article 40 If a citizen, a legal person or any other organization fails to observe the time limit prescribed by law due to force majeure or other special reasons, he or it may apply for an extension of the time limit within ten days after the obstacle is removed; the requested extension shall be decided by a people's court.

Article 41 The following requirements shall be met when a suit is brought:

- (1) The plaintiff must be a citizen, a legal person or any other organization that considers a specific administrative act to have infringed upon his or its lawful rights and interests;
- (2) There must be a specific defendant or defendants;
- (3) There must be a specific claim and a corresponding factual basis for the suit; and
- (4) The suit must fall within the scope of cases acceptable to the people's courts and the specific jurisdiction of the people's court where it is filed.

Article 42 When a people's court receives a bill of complaint, it shall, upon examination, file a case within seven days or decide to reject the complaint. If the plaintiff refuses to accept the decision, he may appeal to a people's court.

## Chapter VII Trial and Judgment

Article 43 A people's court shall send a copy of the bill of complaint to the defendant within five days of filing the case. The defendant shall provide the people's court with the documents on the basis of which a specific administrative act has been undertaken and file a bill of defence within ten days of receiving the copy of the bill of complaint. The people's court shall send a copy of the bill of defence to the plaintiff within five days of receiving it.

Failure by the defendant to file a bill of defence shall not prevent the case from being tried by the people's court.

Article 44 During the time of legal proceedings, execution of the specific administrative act shall not be suspended. Execution of the specific administrative act shall be suspended under one of the following circumstances:

- (1) where suspension is deemed necessary by the defendant;
- (2) where suspension of execution is ordered by the people's court at the request of the plaintiff because, in the view of the people's court, execution of the specific administrative act will cause irreparable losses and suspension of the execution will not harm public interests; or
- (3) where suspension of execution is required by the provisions of laws or regulations.

Article 45 Administrative cases in the people's courts shall be tried in public, except for those that involve state secrets or the private affairs of individuals or are otherwise provided for by law.

Article 46 Administrative cases in the people's courts shall be tried by a collegial panel of judges or of judges and assessors. The number of members of a collegial panel shall be an odd number of three or more.

Article 47 If a party considers a member of the judicial personnel to have an interest in the case or to be otherwise related to it, which may affect the impartial handling of the case, the party shall have the right to demand his withdrawal.

If a member of the judicial personnel considers himself to have an interest in the case or to be otherwise related to it, he shall apply for withdrawal.

The provisions of the two preceding paragraphs shall apply to court clerks, interpreters, expert witnesses and persons who conduct inquests.

The withdrawal of the president of the court as the chief judge shall be decided by the court's adjudication committee; the withdrawal of a member of the judicial personnel shall be decided by the president of the court; the withdrawal of other personnel shall be decided by the chief judge. Parties who refuse to accept the decision may apply for reconsideration.

Article 48 If the plaintiff refuses to appear in court without justified reasons after being twice legally summoned by the people's court, the court shall consider this an application for the withdrawal of the suit; if the defendant refuses to appear in court without justified reasons, the court may make a judgment by default.

Article 49 If a participant in the proceedings or any other person commits any of the following acts, the people's court may, according to the seriousness of his offence, reprimand him, order him to sign a statement of repentance or impose upon him a fine of not more than 1,000 yuan or detain him for not longer than 15 days; if a crime is constituted, his criminal responsibility shall be investigated:

(1) evading without reason, refusing to assist in or obstructing the execution of the notice of a people's court for assistance in its execution by a person who has the duty to render assistance;

(2) forging, concealing or destroying evidence;

(3) instigating, suborning or threatening others to commit perjury or hindering witnesses from giving testimony;

(4) concealing, transferring, selling or destroying the property that has been sealed up, seized or frozen;

(5) using violence, threats or other means to hinder the personnel of a people's court from performing their duties or disturbing the order of the work of a people's court; or

(6) insulting, slandering, framing, beating or retaliating against the personnel of a people's court, participants in proceedings or personnel who assist in the execution of duties;

A fine or detention must be approved by the president of a people's court. Parties who refuse to accept the punishment decision may apply for reconsideration.

Article 50 A people's court shall not apply conciliation in handling an administrative case.



Article 51 Before a people's court announces its judgment or order on an administrative case, if the plaintiff applies for the withdrawal of the suit, or if the defendant amends its specific administrative act and, as a result, the plaintiff agrees and applies for the withdrawal of the suit, the people's court shall decide whether or not to grant the approval.

Article 52 In handling administrative cases, the people's courts shall take the law, administrative rules and regulations and local regulations as the criteria. Local regulations shall be applicable to administrative cases within the corresponding administrative areas.

In handling administrative cases of a national autonomous area, the people's courts shall also take the regulations on autonomy and separate regulations of the national autonomous area as the criteria.

Article 53 In handling administrative cases, the people's courts shall take, as references, regulations formulated and announced by ministries or commissions under the State Council in accordance with the law and administrative rules and regulations, decisions or orders of the State Council and regulations formulated and announced, in accordance with the law and administrative rules and regulations of the State Council, by the people's governments of provinces, autonomous regions and municipalities directly under the Central Government, of the cities where the people's governments of provinces and autonomous regions are located, and of the larger cities approved as such by the State Council.

If a people's court considers regulations formulated and announced by a local people's government to be inconsistent with regulations formulated and announced by a ministry or commission under the State Council, or if it considers regulations formulated and announced by ministries or commissions under the State Council to be inconsistent with each other, the Supreme People's Court shall refer the matter to the State Council for interpretation or ruling.

Article 54 After hearing a case, a people's court shall make the following judgments according to the varying conditions:

(1) If the evidence for undertaking a specific administrative act is conclusive, the application of the law and regulations to the act is correct, and the legal procedure is complied with, the specific administrative act shall be sustained by judgment.

(2) If a specific administrative act has been undertaken in one of the following circumstances, the act shall be annulled or partially annulled by judgment, or the defendant may be required by judgment to undertake a specific administrative act anew:

- a. inadequacy of essential evidence;
- b. erroneous application of the law or regulations;
- c. violation of legal procedure;
- d. exceeding authority; or
- e. abuse of powers.

(3) If a defendant fails to perform or delays the performance of his statutory duty, a fixed time shall be set by judgment for his performance of the duty.

(4) If an administrative sanction is obviously unfair, it may be amended by judgment.

Article 55 A defendant who has been judged by a people's court to undertake a specific administrative act anew must not, based on the same fact and reason, undertake a specific administrative act essentially identical with the original act.

Article 56 In handling administrative cases, if a people's court considers the head of an administrative organ or the person directly in charge to have violated administrative discipline, it shall transfer the relevant materials to the administrative organ or the administrative organ at the next higher level or to a supervisory or personnel department; if a people's court considers the person to have committed a crime, it shall transfer the relevant materials to the public security and procuratorial organs.

Article 57 A people's court shall pass a judgment of first instance within three months from the day of filing the case. Extension of the time limit necessitated by special circumstances shall be approved by a higher people's court, extension of the time limit for handling a case of first instance by a higher people's court shall be approved by the Supreme People's Court.

Article 58 If a party refuses to accept a judgment of first instance by a people's court, he shall have the right to file an appeal with the people's court at the next higher level within 15 days of the serving of the written judgment. If a party refuses to accept an order of first instance by a people's court, he shall have the right to file an appeal with the people's court at the next higher level within 10 days of the serving of the written order. All judgments and orders of first instance by a people's court that have not been appealed within the prescribed time limit shall be legally effective.

Article 59 A people's court may handle an appealed case by examining the court records, if it considers the facts clearly ascertained.

Article 60 In handling an appealed case, a people's court shall make a final judgment within two months from the day of receiving the appeal. Extension of the time limit necessitated by special circumstances shall be approved by a higher people's court, extension of the time limit for handling an appealed case by a higher people's court shall be approved by the Supreme People's Court.

Article 61 A people's court shall handle an appealed case respectively according to the conditions set forth below:

(1) If the facts are clearly ascertained and the law and regulations are correctly applied in the original judgment, the appeal shall be rejected and the original judgment sustained;

(2) If the facts are clearly ascertained but the law and regulations are incorrectly applied in the original judgment, the judgment shall be amended according to the law and regulations; or

(3) If the facts are not clearly ascertained in the original judgment or the evidence is insufficient, or a violation of the prescribed procedure may have affected the correctness of the original judgment, the original judgment shall be rescinded and the case remanded to the original people's court for retrial, or the people's court of the second instance may amend the judgment after investigating and clarifying the facts. The parties may appeal against the judgment or order rendered in a retrial of their case.

Article 62 If a party considers that a legally effective judgment or order contains some definite error, he may make complaints to the people's court which tried the case or to a people's court at a higher level, but the execution of the judgment or order shall not be suspended.

Article 63 If the president of a people's court finds a violation of provisions of the law or regulations in a legally effective judgment or order of his court and deems it necessary to have the case retried, he shall refer the matter to the adjudication committee, which shall decide whether a retrial is necessary.

If a people's court at a higher level finds a violation of provisions of the law or regulations in a legally effective judgment or order of a people's court at a lower level, it shall have the power to bring the case up for trial itself or direct the people's court at the lower level to conduct a retrial.

Article 64 If the people's procuratorate finds a violation of provisions of the law or regulations in a legally effective judgment or order of a people's court, it shall have the right to lodge a protest in accordance with procedures of judicial supervision.

## Chapter VIII Execution

Article 65 The parties must perform the legally effective judgment or order of the people's court.

If a citizen, a legal person or any other organization refuses to perform the judgment or order, the administrative organ may apply to a people's court of first instance for compulsory execution or proceed with compulsory execution according to law.

If an administrative organ refuses to perform the judgment or order, the people's court of first instance may adopt the following measures:

- (1) Informing the bank to transfer from the administrative organ's account the amount of the fine that should be returned or the damages that should be paid;
- (2) Imposing a fine of 50 to 100 yuan per day on an administrative organ that fails to perform the judgment or order within the prescribed time limit, counting from the day when the time limit expires;
- (3) Putting forward a judicial proposal to the administrative organ superior to the administrative organ in question or to a supervisory or personnel department; the organ or department that

accepts the judicial proposal shall deal with the matter in accordance with the relevant provisions and inform the people's court of its disposition; and

(4) If an administrative organ refuses to execute a judgment or order, and the circumstances are so serious that a crime is constituted, the head of the administrative organ and the person directly in charge shall be investigated for criminal responsibility according to law.

Article 66 If a citizen, a legal person or any other organization, during the period prescribed by law, neither brings a suit nor carries out the specific administrative act, the administrative organ may apply to a people's court for compulsory execution, or proceed with compulsory execution according to law.

## Chapter IX Liability for Compensation of Infringement of Rights

Article 67 A citizen, a legal person or any other organization who suffers damage because of the infringement upon his or its lawful rights and interests by a specific administrative act of an administrative organ or the personnel of an administrative organ, shall have the right to claim compensation.

If a citizen, a legal person or any other organization makes an independent claim for damages, the case shall first be dealt with by an administrative organ. Anyone who refuses to accept the disposition by the administrative organ may file a suit in a people's court.

Conciliation may be applied in handling a suit for damages.

Article 68 If a specific administrative act undertaken by an administrative organ or the personnel of an administrative organ infringes upon the lawful rights and interests of a citizen, a legal person or any other organization and causes damage, the administrative organ or the administrative organ to which the above-mentioned personnel belongs shall be liable for compensation.

After paying the compensation, the administrative organ shall instruct those members of its personnel who have committed intentional or gross mistakes in the case to bear part or all of the damages.

Article 69 The cost of compensation shall be included as an expenditure in the government budget at various levels. The people's governments at various levels may order the administrative organs responsible for causing the compensation to bear part or all of the damages. The specific measures thereof shall be formulated by the State Council.

## Chapter X Administrative Procedure Involving Foreign Interests

Article 70 This Law shall be applicable to foreign nationals, stateless persons and foreign organizations that are engaged in administrative suits in the People's Republic of China, except as otherwise provided for by law.

Article 71 Foreign nationals, stateless persons and foreign organizations that are engaged in administrative suits in the People's Republic of China shall have the same litigation rights and obligations as citizens and organizations of the People's Republic of China.

Should the courts of a foreign country impose restrictions on the administrative litigation rights of the citizens and organizations of the People's Republic of China, the Chinese people's courts shall follow the principle of reciprocity regarding the administrative litigation rights of the citizens and organizations of that foreign country.

Article 72 If an international treaty concluded or acceded to by the People's Republic of China contains provisions different from those found in this Law, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations.

Article 73 When foreign nationals, stateless persons and foreign organizations appoint lawyers as their agents ad litem in administrative suits in the People's Republic of China, they shall appoint lawyers of a lawyers' organization of the People's Republic of China.

## Chapter XI Supplementary Provisions

Article 74 A people's court shall charge litigation fees for handling administrative cases. The litigation fee shall be borne by the losing party, or by both parties if they are both held responsible. The procedure for the charging of litigation fees shall be specified separately.

Article 75 This Law shall come into force as of October 1, 1990.

# **Arbitration Law of the People's Republic of China**

Adopted at the Ninth Meeting of the Standing Committee of the Eighth National People's Congress on August 31, 1994 and promulgated by Order No.31 of the President of the People's Republic of China on August 31, 1994

## Contents

Chapter I General Provisions

Chapter II Arbitration Commissions and the Arbitration Association

Chapter III Arbitration Agreement

Chapter IV Arbitration Proceedings

Section 1 Application and Acceptance

Section 2 Formation of Arbitration Tribunal

Section 3 Hearing and Award

Chapter V Application for Setting Aside Arbitration Award

Chapter VI Enforcement

Chapter VII Special Provisions for Arbitration Involving Foreign Elements

Chapter VIII Supplementary Provisions

Chapter I General Provisions

Article 1 This Law is formulated in order to ensure the impartial and prompt arbitration of economic disputes, to protect the legitimate rights and interests of the parties and to safeguard the sound development of the socialist market economy.

Article 2 Contractual disputes and other disputes over rights and interests in property between citizens, legal persons and other organizations that are equal subjects may be arbitrated.

Article 3 The following disputes may not be arbitrated:

- (1) marital, adoption, guardianship, support and succession disputes;
- (2) administrative disputes that shall be handled by administrative organs as prescribed by law.

Article 4 The parties' submission to arbitration to resolve their dispute shall be on the basis of both parties' free will and an arbitration agreement reached between them. If a party applies for arbitration in the absence of an arbitration agreement, the arbitration commission shall not accept the case.

Article 5 If the parties have concluded an arbitration agreement and one party institutes an action in a people's court, the people's court shall not accept the case, unless the arbitration agreement is null and void.

Article 6 The arbitration commission shall be selected by the parties through agreement. In arbitration, there shall be no jurisdiction by level and no territorial jurisdiction.

Article 7 In arbitration, disputes shall be resolved on the basis of facts, in compliance with the law and in an equitable and reasonable manner.

Article 8 Arbitration shall be carried out independently according to law and shall be free from interference of administrative organs, social organizations or individuals.

Article 9 A system of a single and final award shall be practised for arbitration. If a party applies for arbitration to an arbitration commission or institutes an action in a people's court regarding the same dispute after an arbitration award has been made, the arbitration commission or the people's court shall not accept the case.

If an arbitration award is set aside or its enforcement is disallowed by the people's court in accordance with the law, a party may apply for arbitration on the basis of a new arbitration agreement reached between the parties, or institute an action in the people's court, regarding the same dispute.

## Chapter II Arbitration Commissions and the Arbitration Association

Article 10 Arbitration commissions may be established in municipalities directly under the Central Government and in cities that are the seats of the people's governments of provinces or autonomous regions. They may also be established in other cities divided into districts, according to need. Arbitration commissions shall not be established at each level of the administrative divisions.

People's governments of the cities referred to in the preceding paragraph shall arrange for the relevant departments and chambers of commerce to organize arbitration commissions in a unified manner.

The establishment of an arbitration commission shall be registered with the administrative department of justice of the relevant province, autonomous region or municipality directly under the Central Government.

Article 11 An arbitration commission shall meet the conditions set forth below:

- (1) To have its own name, domicile and charter;
- (2) To have the necessary property;
- (3) To have the personnel that are to form the commission; and
- (4) To have appointed arbitrators.

The charter of an arbitration commission shall be formulated in accordance with this Law.

Article 12 An arbitration commission shall be composed of one chairman, two to four vice chairmen and seven to eleven members.

The offices of chairman, vice chairman and members of an arbitration commission shall be held by experts in the field of law, economy and trade and persons with practical working experience. Experts in the field of law, economy and trade shall account for at least two thirds of the people forming an arbitration commission.

Article 13 An arbitration commission shall appoint its arbitrators from among righteous and upright persons.

An arbitrator shall meet one of the conditions set forth below:

- (1) To have been engaged in arbitration work for at least eight years;
- (2) To have worked as a lawyer for at least eight years;
- (3) To have served as a judge for at least eight years;
- (4) To have been engaged in legal research or legal education, possessing a senior professional title;  
or
- (5) To have acquired the knowledge of law, engaged in the professional work in the field of economy and trade, etc., possessing a senior professional title or having an equivalent professional level.

An arbitration commission shall have a register of arbitrators in different specializations.

Article 14 Arbitration commissions shall be independent from administrative organs and there shall be no subordinate relationships between arbitration commissions and administrative organs. There shall also be no subordinate relationships between arbitration commissions.

Article 15 China Arbitration Association is a social organization with the status of a legal person. Arbitration commissions are members of China Arbitration Association. The charter of China Arbitration Association shall be formulated by its national congress of members.

China Arbitration Association is a self-disciplined organization of arbitration commissions. It shall, in accordance with its charter, supervise arbitration commissions and their members and arbitrators as to whether or not they breach discipline.



China Arbitration Association shall formulate rules of arbitration in accordance with this Law and the relevant provisions of the Civil Procedure Law.

### Chapter III Arbitration Agreement

Article 16 An arbitration agreement shall include arbitration clauses stipulated in the contract and agreements of submission to arbitration that are concluded in other written forms before or after disputes arise.

An arbitration agreement shall contain the following particulars:

- (1) an expression of intention to apply for arbitration;
- (2) matters for arbitration; and
- (3) a designated arbitration commission.

Article 17 An arbitration agreement shall be null and void under one of the following circumstances:

- (1) The agreed matters for arbitration exceed the range of arbitrable matters as specified by law; (2) One party that concluded the arbitration agreement has no capacity for civil conducts or has limited capacity for civil conducts; or
- (3) One party coerced the other party into concluding the arbitration agreement.

Article 18 If an arbitration agreement contains no or unclear provisions concerning the matters for arbitration or the arbitration commission, the parties may reach a supplementary agreement. If no such supplementary agreement can be reached, the arbitration agreement shall be null and void.

Article 19 An arbitration agreement shall exist independently. The amendment, rescission, termination or invalidity of a contract shall not affect the validity of the arbitration agreement.

The arbitration tribunal shall have the power to affirm the validity of a contract.

Article 20 If a party challenges the validity of the arbitration agreement, he may request the arbitration commission to make a decision or apply to the people's court for a ruling. If one party requests the arbitration commission to make a decision and the other party applies to the people's court for a ruling, the people's court shall give a ruling.

A party's challenge of the validity of the arbitration agreement shall be raised prior to the arbitration tribunal's first hearing.

### Chapter IV Arbitration Proceedings

## Section 1 Application and Acceptance

Article 21 A party's application for arbitration shall meet the following requirements:

- (1) There is an arbitration agreement;
- (2) There is a specific arbitration claim and there are facts and reasons therefore; and
- (3) The application is within the scope of the arbitration commission's acceptability.

Article 22 To apply for arbitration, a party shall submit to the arbitration commission the written arbitration agreement and a written application for arbitration together with copies thereof.

Article 23 A written application for arbitration shall specify the following particulars:

- (1) the name, sex, age, occupation, work unit and domicile of each party, or the name and domicile of legal persons or other organizations and the names and positions of their legal representatives or chief responsible persons;
- (2) the arbitration claim and the facts and reasons on which it is based; and
- (3) the evidence, the source of the evidence and the names and domiciles of witnesses.

Article 24 When an arbitration commission receives a written application for arbitration and considers that the application complies with the conditions for acceptance, it shall accept the application and notify the party within five days from the date of receipt. If the arbitration commission considers that the application does not comply with the conditions for acceptance, it shall inform the party in writing of its rejection of the application and explain the reasons for rejection within five days from the date of receipt.

Article 25 After an arbitration commission accepts an application for arbitration, it shall, within the time limit specified in the rules of arbitration, deliver a copy of the rules of arbitration and the register of arbitrators to the claimant, and serve one copy of the application for arbitration together with the rules of arbitration and the register of arbitrators on the respondent.

After receiving the copy of the application for arbitration, the respondent shall submit a written defense to the arbitration commission within the time limit specified in the rules of arbitration. After receiving the written defense, the arbitration commission shall serve a copy thereof on the claimant within the time limit specified in the rules of arbitration. Failure on the part of the respondent to submit a written defense shall not affect the progress of the arbitration proceedings.

Article 26 If the parties have concluded an arbitration agreement and one party has instituted an action in a people's court without declaring the existence of the arbitration agreement and, after the people's court has accepted the case, the other party submits the arbitration agreement prior to the first hearing, the people's court shall dismiss the case unless the arbitration agreement is null and void. If, prior to the first hearing, the other party has not raised an objection to the people's

court's acceptance of the case, he shall be deemed to have renounced the arbitration agreement and the people's court shall continue to try the case.

Article 27 The claimant may renounce or amend its arbitration claim. The respondent may accept or refuse an arbitration claim and shall have the right to make a counter-claim.

Article 28 A party may apply for property preservation if it may become impossible or difficult for the party to implement the award due to an act of the other party or other causes.

If a party applies for property preservation, the arbitration commission shall submit the party's application to the people's court in accordance with the relevant provisions of the Civil Procedure Law.

If an application for property preservation has been wrongfully made, the applicant shall compensate the person against whom the application has been made for any loss incurred from property preservation.

Article 29 A party or statutory agent may appoint a lawyer or other agent to carry out arbitration activities. To appoint a lawyer or other agent to carry out arbitration activities, a power of attorney shall be submitted to the arbitration commission.

## Section 2 Formation of Arbitration Tribunal

Article 30 An arbitration tribunal may be composed of either three arbitrators or one arbitrator. An arbitration tribunal composed of three arbitrators shall have a presiding arbitrator.

Article 31 If the parties agree that the arbitration tribunal shall be composed of three arbitrators, they shall each appoint or entrust the chairman of the arbitration commission to appoint one arbitrator. The parties shall jointly select or jointly entrust the chairman of the arbitration commission to appoint the third arbitrator who shall be the presiding arbitrator.

If the parties agree that the arbitration tribunal shall be composed of one arbitrator, they shall jointly appoint or jointly entrust the chairman of the arbitration commission to appoint the arbitrator.

Article 32 If the parties fail to agree on the method of formation of the arbitration tribunal or to select the arbitrators within the time limit specified in the rules of arbitration, the arbitrators shall be appointed by the chairman of the arbitration commission.

Article 33 After the arbitration tribunal has been formed, the arbitration commission shall notify the parties in writing of the tribunal's formation.

Article 34 In one of the following circumstances, the arbitrator must withdraw, and the parties shall also have the right to challenge the arbitrator for a withdrawal:

- (1) The arbitrator is a party in the case or a close relative of a party or of an agent in the case;
- (2) The arbitrator has a personal interest in the case;

(3) The arbitrator has other relationship with a party or his agent in the case which may affect the impartiality of arbitration; or

(4) The arbitrator has privately met with a party or agent or accepted an invitation to entertainment or gift from a party or agent.

Article 35 If a party challenges an arbitrator, he shall submit his challenge, with a statement of the reasons therefore, prior to the first hearing. If the matter giving rise to the challenge became known after the first hearing, the challenge may be made before the conclusion of the final hearing of the case.

Article 36 The decision as to whether or not the arbitrator should withdraw shall be made by the chairman of the arbitration commission. If the chairman of the arbitration commission serves as an arbitrator, the decision shall be made collectively by the arbitration commission.

Article 37 If an arbitrator cannot perform his duties due to his withdrawal or for other reasons, a substitute arbitrator shall be selected or appointed in accordance with this Law.

After a substitute arbitrator has been selected or appointed on account of an arbitrator's withdrawal, a party may request that the arbitration proceedings already carried out should be carried out anew. The decision as to whether to approve it or not shall be made by the arbitration tribunal. The arbitration tribunal may also make a decision of its own motion as to whether or not the arbitration proceedings already carried out should be carried out anew.

Article 38 If an arbitrator is involved in the circumstances described in item (4) of Article 34 of this Law and the circumstances are serious or involved in the circumstances described in item (6) of Article 58 of this Law, he shall assume legal liability according to law and the arbitration commission shall remove his name from the register of arbitrators.

### Section 3 Hearing and Award

Article 39 Arbitration shall be conducted by means of oral hearings. If the parties agree to arbitration without oral hearings, the arbitration tribunal may render an arbitration award on the basis of the written application for arbitration, the written defense and other material.

Article 40 Arbitration shall be conducted in camera. If the parties agree to public arbitration, the arbitration may be public unless State secrets are involved.

Article 41 The arbitration commission shall notify the parties of the date of the hearing within the time limit specified in the rules of arbitration. A party may, within the time limit specified in the rules of arbitration, request a postponement of the hearing if he has justified reasons therefore. The arbitration tribunal shall decide whether or not to postpone the hearing.

Article 42 If the claimant fails to appear before the arbitration tribunal without justified reasons after having been notified in writing or leaves the hearing prior to its conclusion without the permission of the arbitration tribunal, he may be deemed to have withdrawn his application for arbitration.

If the respondent fails to appear before the arbitration tribunal without justified reasons after having been notified in writing or leaves the hearing prior to its conclusion without the permission of the arbitration tribunal, a default award may be made.

Article 43 Parties shall provide evidences in support of their own arguments.

The arbitration tribunal may, as it considers necessary, collect evidences on its own.

Article 44 If the arbitration tribunal considers that a special issue requires appraisal, it may refer the issue for appraisal to an appraisal department agreed on by the parties or to an appraisal department designated by the arbitration tribunal.

If requested by a party or required by the arbitration tribunal, the appraisal department shall send its appraiser to attend the hearing. Subject to the permission of the arbitration tribunal, the parties may question the appraiser.

Article 45 The evidence shall be presented during the hearings and may be examined by the parties.

Article 46 Under circumstances where the evidence may be destroyed or lost or difficult to obtain at a later time, a party may apply for preservation of the evidence. If a party applies for preservation of the evidence, the arbitration commission shall submit his application to the basic people's court in the place where the evidence is located.

Article 47 The parties shall have the right to carry on debate in the course of arbitration. At the end of the debate, the presiding arbitrator or the sole arbitrator shall solicit final opinions from the parties.

Article 48 The arbitration tribunal shall make records of the hearings in writing. The parties and other participants in the arbitration shall have the right to apply for supplementation or correction of the record of their own statements if they consider that such record contains omissions or errors. If no supplementation or corrections are to be made, their application therefore shall be recorded.

The record shall be signed or sealed by the arbitrators, the recordist, the parties and other participants in the arbitration.

Article 49 After an application for arbitration has been made, the parties may settle their dispute on their own. If the parties have reached a settlement agreement, they may request the arbitration tribunal to make an arbitration award in accordance with the settlement agreement; alternatively, they may withdraw their application for arbitration.

Article 50 If a party repudiates the settlement agreement after the application for arbitration has been withdrawn, he may apply for arbitration again in accordance with the arbitration agreement.

Article 51 The arbitration tribunal may carry out conciliation prior to giving an arbitration award. The arbitration tribunal shall conduct conciliation if both parties voluntarily seek conciliation. If conciliation is unsuccessful, an arbitration award shall be made promptly.

If conciliation leads to a settlement agreement, the arbitration tribunal shall make a written conciliation statement or make an arbitration award in accordance with the result of the settlement agreement. A written conciliation statement and an arbitration award shall have equal legal effect.

Article 52 A written conciliation statement shall specify the arbitration claim and the results of the settlement agreed upon between the parties. The written conciliation statement shall be signed by the arbitrators, sealed by the arbitration commission, and then served on both parties.

The written conciliation statement shall become legally effective immediately after both parties have signed for receipt thereof.

If the written conciliation statement is repudiated by a party before he signs for receipt thereof, the arbitration tribunal shall promptly make an arbitration award.

Article 53 The arbitration award shall be made in accordance with the opinion of the majority of the arbitrators. The opinion of the minority of the arbitrators may be entered in the record. If the arbitration tribunal is unable to form a majority opinion, the arbitration award shall be made in accordance with the opinion of the presiding arbitrator.

Article 54 An arbitration award shall specify the arbitration claim, the facts of the dispute, the reasons for the decision, the results of the award, the allocation of arbitration fees and the date of the award. If the parties agree that they do not wish the facts of the dispute and the reasons for the decision to be specified in the arbitration award, the same may be omitted. The arbitration award shall be signed by the arbitrators and sealed by the arbitration commission. An arbitrator with dissenting opinions as to the arbitration award may sign the award or choose not to sign it.

Article 55 In arbitration proceedings, if a part of the facts involved has already become clear, the arbitration tribunal may first make an award in respect of such part of the facts.

Article 56 If there are literal or calculation errors in the arbitration award, or if the matters which have been decided by the arbitration tribunal are omitted in the arbitration award, the arbitration tribunal shall make due corrections or supplementation. The parties may, within 30 days from the date of receipt of the award, request the arbitration tribunal to make such corrections or supplementation.

Article 57 The arbitration award shall be legally effective as of the date on which it is made.

## Chapter V Application for Setting Aside Arbitration Award

Article 58 A party may apply for setting aside an arbitration award to the intermediate people's court in the place where the arbitration commission is located if he can produce evidence which proves that the arbitration award involves one of the following circumstances:

(1) There is no arbitration agreement;

- (2) The matters decided in the award exceed the scope of the arbitration agreement or are beyond the arbitral authority of the arbitration commission;
- (3) The formation of the arbitration tribunal or the arbitration procedure was not in conformity with the statutory procedure;
- (4) The evidence on which the award is based was forged;
- (5) The other party has withheld the evidence which is sufficient to affect the impartiality of the arbitration; or
- (6) The arbitrators have committed embezzlement, accepted bribes or done malpractices for personal benefits or perverted the law in the arbitration of the case.

The people's court shall rule to set aside the arbitration award if a collegial panel formed by the people's court verifies upon examination that the award involves one of the circumstances set forth in the preceding paragraph.

If the people's court determines that the arbitration award violates the public interest, it shall rule to set aside the award.

Article 59 A party that wishes to apply for setting aside the arbitration award shall submit such application within six months from the date of receipt of the award.

Article 60 The people's court shall, within two months from the date of accepting an application for setting aside an arbitration award, rule to set aside the award or to reject the application.

Article 61 If, after accepting an application for setting aside an arbitration award, the people's court considers that the case may be re-arbitrated by the arbitration tribunal, it shall notify the tribunal that it shall re-arbitrate the case within a certain time limit and shall rule to stay the setting-aside procedure. If the arbitration tribunal refuses to re-arbitrate the case, the people's court shall rule to resume the setting-aside procedure.

## Chapter VI Enforcement

Article 62 The parties shall perform the arbitration award. If a party fails to perform the arbitration award, the other party may apply to the people's court for enforcement in accordance with the relevant provisions of the Civil Procedure Law. The people's court to which the application has been made shall enforce the award.

Article 63 If the party against whom the enforcement is sought presents evidence which proves that the arbitration award involves one of the circumstances set forth in the second paragraph of Article 217 of the Civil Procedure Law, the people's court shall, after examination and verification by a collegial panel formed by the people's court, rule to disallow the award.

Article 64 If one party applies for enforcement of the arbitration award and the other party applies for setting aside the arbitration award, the people's court shall rule to suspend the procedure of enforcement.

If the people's court rules to set aside the arbitration award, it shall rule to terminate the enforcement procedure. If the people's court rules to reject the application for setting aside the arbitration award, it shall rule to resume the enforcement procedure.

## Chapter VII Special Provisions for Arbitration Involving Foreign Elements

Article 65 The provisions of this Chapter shall apply to the arbitration of disputes arising from economic, trade, transportation and maritime activities involving a foreign element. For matters not covered in this Chapter, the other relevant provisions of this Law shall apply.

Article 66 Foreign-related arbitration commissions may be organized and established by the China Chamber of International Commerce.

A foreign-related arbitration commission shall be composed of one chairman, a certain number of vice chairmen and members.

The chairman, vice chairmen and members of a foreign-related arbitration commission may be appointed by the China Chamber of International Commerce.

Article 67 A foreign-related arbitration commission may appoint arbitrators from among foreigners with special knowledge in the fields of law, economy and trade, science and technology, etc..

Article 68 If a party to a foreign-related arbitration applies for preservation of the evidence, the foreign-related arbitration commission shall submit his application to the intermediate people's court in the place where the evidence is located.

Article 69 A foreign-related arbitration tribunal may enter the details of the hearings in written records or make written minutes thereof. The written minutes may be signed or sealed by the parties and other participants in the arbitration.

Article 70 If a party presents evidence which proves that a foreign-related arbitration award involves one of the circumstances set forth in the first paragraph of Article 260 of the Civil Procedure Law, the people's court shall, after examination and verification by a collegial panel formed by the people's court, rule to set aside the award.

Article 71 If the party against whom the enforcement is sought presents evidence which proves that the foreign-related arbitration award involves one of the circumstances set forth in the first paragraph of Article 260 of the Civil Procedure Law, the people's court shall, after examination and verification by a collegial panel formed by the people's court, rule to disallow the enforcement.



Article 72 If a party applies for enforcement of a legally effective arbitration award made by a foreign-related arbitration commission and if the party against whom the enforcement is sought or such party's property is not within the territory of the People's Republic of China, he shall directly apply to a competent foreign court for recognition and enforcement of the award.

Article 73 Foreign-related arbitration rules may be formulated by the China Chamber of International Commerce in accordance with this Law and the relevant provisions of the Civil Procedure Law.

## Chapter VIII Supplementary Provisions

Article 74 If prescription for arbitration is provided by law, such provisions shall apply. In the absence of such provisions, the prescription for litigation shall apply to arbitration.

Article 75 Prior to the formulation of rules of arbitration by China Arbitration Association, arbitration commissions may formulate provisional rules of arbitration in accordance with this Law and the relevant provisions of the Civil Procedure Law.

Article 76 Parties shall pay arbitration fees according to regulations.

Measures for charging arbitration fees shall be submitted to the price control authorities for examination and approval.

Article 77 Regulations concerning arbitration of labor disputes and agricultural contractor's contract disputes arising within the agricultural collective economic organizations shall be formulated separately.

Article 78 If regulations governing arbitration promulgated prior to the implementation of this Law contravene the provisions of this Law, the provisions of this Law shall prevail.

Article 79 Arbitration institutions established prior to the implementation of this Law in the municipalities directly under the Central Government, in the cities that are the seats of the people's governments of provinces or autonomous regions and in other cities divided into districts shall be reorganized in accordance with this Law. Those of such arbitration institutions that have not been reorganized shall terminate upon the end of one year from the date of the implementation of this Law.

Other arbitration institutions established prior to the implementation of this Law that do not comply with the provisions of this Law shall terminate on the date of the implementation of this Law.

Article 80 This Law shall go into effect as of September 1, 1995.

# **Civil Procedure Law of the People's Republic of China**

Adopted at the Fourth Session of the Seventh National People's Congress and promulgated by Order No. 44 of the President of the People's Republic of China on April 9, 1991

## Contents

### Part One General Provisions

#### Chapter I The Aim, Scope of Application and Basic Principles

#### Chapter II Jurisdiction

##### Section 1 Jurisdiction by Forum Level

##### Section 2 Territorial Jurisdiction

##### Section 3 Transfer and Designation of Jurisdiction

#### Chapter III Trial Organization

#### Chapter IV Withdrawal

#### Chapter V Participants in Proceedings

##### Section 1 Parties

##### Section 2 Agents ad Litem

#### Chapter VI Evidence

#### Chapter VII Time Periods and Service

##### Section 1 Time Periods

##### Section 2 Service

#### Chapter VIII Conciliation

#### Chapter IX Property Preservation and Advance Execution

#### Chapter X Compulsory Measures Against Obstruction of Civil Proceedings

#### Chapter XI Litigation Costs

### Part Two Trial Procedure

#### Chapter XII Ordinary Procedure of First Instance

##### Section 1 Bringing a Lawsuit and Entertaining a Case

Section 2 Preparations for Trial

Section 3 Trial in Court

Section 4 Suspension and Termination of Litigation

Section 5 Judgment and Order

Chapter XIII Summary Procedure

Chapter XIV Procedure of Second Instance

Chapter XV Special Procedure

Section 1 General Provisions

Section 2 Cases Concerning the Qualification of Voters

Section 3 Cases Concerning the Proclamation of a Person as Missing or Dead

Section 4 Cases Concerning the Determination of Legal Incapacity or Restricted Legal Capacity of Citizens

Section 5 Cases Concerning the Determination of a Property as Ownerless

Chapter XVI Procedure for Trial Supervision

Chapter XVII Summary Procedure for Hastening Recovery of a Debt

Chapter XVIII Procedure for Publicizing Public Notice for Assertion of Claims

Chapter XIX Bankruptcy and Debt Repayment Proceedings for Legal Person Enterprises

Part Three Procedure of Execution

Chapter XX General Stipulations

Chapter XXI Application for Execution and Referral

Chapter XXII Execution Measures

Chapter XXIII Suspension and Termination of Execution

Part Four Special Provisions for Civil Proceedings of Cases Involving Foreign Element

Chapter XXIV General Principles

Chapter XXV Jurisdiction

Chapter XXVI Service and Time Periods

Chapter XXVII Property Preservation

Chapter XXVIII Arbitration

## Chapter XXIX Judicial Assistance

### Part One General Provisions

#### Chapter I The Aim, Scope of Application and Basic Principles

Article 1 The Civil Procedure Law of the People's Republic of China is formulated on the basis of the Constitution and in the light of the experience and actual conditions of our country in the trial of civil cases.

Article 2 The Civil Procedure Law of the People's Republic of China aims to protect the exercise of the litigation rights of the parties and ensure the ascertaining of facts by the people's courts, distinguish right from wrong, apply the law correctly, try civil cases promptly, affirm civil rights and obligations, impose sanctions for civil wrongs, protect the lawful rights and interests of the parties, educate citizens to voluntarily abide by the law, maintain the social and economic order, and guarantee the smooth progress of the socialist construction.

Article 3 In dealing with civil litigation arising from disputes on property and personal relations between citizens, legal persons or other organizations and between the three of them, the people's courts shall apply the provisions of this Law.

Article 4 Whoever engages in civil litigation within the territory of the People's Republic of China must abide by this Law.

Article 5 Aliens, stateless persons, foreign enterprises and organizations that bring suits or enter appearance in the people's courts shall have the same litigation rights and obligations as citizens, legal persons and other organizations of the People's Republic of China.

If the courts of a foreign country impose restrictions on the civil litigation rights of the citizens, legal persons and other organizations of the People's Republic of China, the people's courts of the People's Republic of China shall follow the principle of reciprocity regarding the civil litigation rights of the citizens, enterprises and organizations of that foreign country.

Article 6 The people's courts shall exercise judicial powers with respect to civil cases.

The people's courts shall try civil cases independently in accordance with the law, and shall be subject to no interference by any administrative organ, public organization or individual.

Article 7 In trying civil cases, the people's courts must base themselves on facts and take the law as the criterion.

Article 8 The parties in civil litigation shall have equal litigation rights. The people's courts shall, in conducting the trials, safeguard their rights, facilitate their exercising the rights, and apply the law equally to them.

Article 9 In trying civil cases, the people's courts shall conduct conciliation for the parties on a voluntary and lawful basis; if conciliation fails, judgments shall be rendered without delay.

Article 10 In trying civil cases, the people's courts shall, according to the provisions of the law, follow the systems of panel hearing, withdrawal, public trial and the court of second instance being that of last instance.

Article 11 Citizens of all nationalities shall have the right to use their native spoken and written languages in civil proceedings.

Where minority nationalities live in aggregation in a community or where several nationalities live together in one area, the people's courts shall conduct hearings and issue legal documents in the spoken and written languages commonly used by the local nationalities.

The people's courts shall provide translations for any participant in the proceedings who is not familiar with the spoken or written languages commonly used by the local nationalities.

Article 12 Parties to civil actions are entitled in the trials by the people's courts to argue for themselves.

Article 13 The parties are free to deal with their own civil rights and litigation rights the way they prefer within the scope provided by the law.

Article 14 The people's procuratorates shall have the right to exercise legal supervision over civil proceedings.

Article 15 Where an act has infringed upon the civil rights and interests of the State, a collective organization or an individual, any State organ, public organization, enterprise or institution may support the injured unit or individual to bring an action in a people's court.

Article 16 The people's conciliation committees shall be mass organizations to conduct conciliation of civil disputes under the guidance of the grass-roots level people's governments and the basic level people's courts.

The people's conciliation committee shall conduct conciliation for the parties according to the Law and on a voluntary basis. The parties concerned shall carry out the settlement agreement reached through conciliation; those who decline conciliation or those for whom conciliation has failed or those who have backed out of the settlement agreement may institute legal proceedings in a people's court.

If a people's conciliation committee, in conducting conciliation of civil disputes, acts contrary to the law, rectification shall be made by the people's court

Article 17 The people's congresses of the national autonomous regions may formulate, in accordance with the Constitution and the principles of this Law, and in conjunction with the specific circumstances of the local nationalities, adaptive and supplementary provisions. Such provisions made by an autonomous region shall be submitted to the Standing Committee of the National People's Congress for approval; those made by an autonomous prefecture or autonomous county shall be submitted to the standing committee of the people's congress of the relevant

province or autonomous region for approval and to the Standing Committee of the National People's Congress for the record.

## Chapter II Jurisdiction

### Section 1 Jurisdiction by Forum Level

Article 18 The basic people's courts shall have jurisdiction as courts of first instance over civil cases, unless otherwise provided in this Law.

Article 19 The intermediate people's courts shall have jurisdiction as courts of first instance over the following civil cases:

- (1) major cases involving foreign element;
- (2) cases that have major impact on the area under their jurisdiction; and
- (3) cases as determined by the Supreme People's Court to be under the jurisdiction of the intermediate people's courts.

Article 20 The high people's courts shall have jurisdiction as courts of first instance over civil cases that have major impact on the areas under their jurisdiction.

Article 21 The Supreme People's Court shall have jurisdiction as the court of first instance over the following civil cases:

- (1) cases that have major impact on the whole country; and
- (2) cases that the Supreme People's Court deems it should try.

### Section 2 Territorial Jurisdiction

Article 22 A civil lawsuit brought against a citizen shall be under the jurisdiction of the people's court of the place where the defendant has his domicile; if the place of the defendant's domicile is different from that of his habitual residence, the lawsuit shall be under the jurisdiction of the people's court of the place of his habitual residence.

A civil lawsuit brought against a legal person or any other organization shall be under the jurisdiction of the people's court of the place where the defendant has his domicile.

Where the domiciles or habitual residences of several defendants in the same lawsuit are in the areas under the jurisdiction of two or more people's courts, all of those people's courts shall have jurisdiction over the lawsuit.

Article 23 The civil lawsuits described below shall be under the jurisdiction of the people's court of the place where the plaintiff has his domicile; if the place of the plaintiff's domicile is different

from that of his habitual residence, the lawsuit shall be under the jurisdiction of the people's court of the place of the plaintiff's habitual residence:

- (1) those concerning personal status brought against persons not residing within the territory of the People's Republic of China;
- (2) those concerning the personal status of persons whose whereabouts are unknown or who have been declared as missing.
- (3) those brought against persons who are undergoing rehabilitation through labour; and
- (4) those brought against persons who are in imprisonment.

Article 24 A lawsuit brought on a contract dispute shall be under the jurisdiction of the people's court of the place where the defendant has his domicile or where the contract is performed.

Article 25 The parties to a contract may agree to choose in their written contract the people's court of the place where the defendant has his domicile, where the contract is performed, where the contract is signed, where the plaintiff has his domicile or where the object of the action is located to exercise jurisdiction over the case, provided that the provisions of this Law regarding jurisdiction by forum level and exclusive jurisdiction are not violated.

Article 26 A lawsuit brought on an insurance contract dispute shall be under the jurisdiction of the people's court of the place where the defendant has his domicile or where the insured object is located.

Article 27 A lawsuit brought on a bill dispute shall be under the jurisdiction of the people's court of the place where the bill is to be paid or where the defendant has his domicile.

Article 28 A lawsuit arising from a dispute over a railway, road, water, or air transport contract or over a combined transport contract shall be under the jurisdiction of the people's court of the place of dispatch or the place of destination or where the defendant has his domicile.

Article 29 A lawsuit brought on a tortious act shall be under the jurisdiction of the people's court of the place where the tort is committed or where the defendant has his domicile.

Article 30 A lawsuit brought on claims for damages caused by a railway, road, water transport or air accident shall be under the jurisdiction of the people's court of the place where the accident occurred or where the vehicle or ship first arrived after the accident or where the aircraft first landed after the accident, or where the defendant has his domicile.

Article 31 A lawsuit brought on claims for damages caused by a collision at sea or by any other maritime accident shall be under the jurisdiction of the people's court of the place where the collision occurred or where the ship in collision first docked after the accident or where the ship at fault was detained, or where the defendant has his domicile.

Article 32 A lawsuit instituted for expenses of maritime salvage shall be under the jurisdiction of the people's court of the place where the salvage took place or where the salvaged ship first docked after the disaster.

Article 33 A lawsuit brought for general average shall be under the jurisdiction of the people's court of the place where the ship first docked or where the adjustment of general average was conducted or where the voyage ended.

Article 34 The following cases shall be under the exclusive jurisdiction of the people's courts herein specified:

- (1) a lawsuit brought on a dispute over real estate shall be under the jurisdiction of the people's court of the place where the estate is located;
- (2) a lawsuit brought on a dispute over harbour operations shall be under the jurisdiction of the people's court of the place where the harbour is located; and
- (3) a lawsuit brought on a dispute over succession shall be under the jurisdiction of the people's court of the place where the decedent had his domicile upon his death, or where the principal part of his estate is located.

Article 35 When two or more people's courts have jurisdiction over a lawsuit, the plaintiff may bring his lawsuit in one of these people's courts; if the plaintiff brings the lawsuit in two or more people's courts that have jurisdiction over the lawsuit, the people's court in which the case was first entertained shall have jurisdiction.

### Section 3 Transfer and Designation of Jurisdiction

Article 36 If a people's court finds that a case it has entertained is not under its jurisdiction, it shall refer the case to the people's court that has jurisdiction over the case. The people's court to which a case has been referred shall entertain the case, and if it considers that, according to the relevant regulations, the case referred to it is not under its jurisdiction, it shall report to a superior people's court for the designation of jurisdiction and shall not independently refer the case again to another people's court.

Article 37 If a people's court which has jurisdiction over a case is unable to exercise the jurisdiction for special reasons, a superior people's court shall designate another court to exercise jurisdiction.

In the event of a jurisdictional dispute between two or more people's courts, it shall be resolved by the disputing parties through consultation; if the dispute cannot be so resolved, it shall be reported to their common superior people's court for the designation of jurisdiction.

Article 38 If a party to an action objects to the jurisdiction of a people's court after the court has entertained the case, the party must raise the objection within the period prescribed for the submission of defence. The people's court shall examine the objection. If the objection is established, the people's court shall order the case to be transferred to the people's court that has jurisdiction over it; if not, the people's court shall reject it.

Article 39 The people's courts at higher levels shall have the power to try civil cases over which the people's courts at lower levels have jurisdiction as courts of first instance; they may also transfer civil cases over which they themselves have jurisdiction as courts of first instance to people's courts at lower levels for trial.



If a people's court at a lower level that has jurisdiction over a civil case as court of first instance deems it necessary to have the case to be tried by a people's court at a higher level, it may submit it to and request the people's court at a higher level to try the case.

### Chapter III Trial Organization

Article 40 The people's court of first instance shall try civil cases by a collegial panel composed of both judges and judicial assessors or of judges alone. The collegial panel must have an odd number of members.

Civil cases in which summary procedure is followed shall be tried by a single judge alone.

When performing their duties, the judicial assessors shall have equal rights and obligations as the judges.

Article 41 The people's court of second instance shall try civil cases by a collegial panel of judges. The collegial panel must have an odd number of members.

For the retrial of a remanded case, the people's court of first instance shall form a new collegial panel in accordance with the procedure of first instance.

If a case for retrial was originally tried at first instance, a new collegial panel shall be formed according to the procedure of first instance; if the case was originally tried at second instance or was brought by a people's court at a higher level to it for trial, a new collegial panel shall be formed according to the procedure of second instance.

Article 42 The president of the court or the chief judge of a division of the court shall designate a judge to serve as the presiding judge of the collegial panel; if the president or the chief judge participates in the trial, he himself shall serve as the presiding judge.

Article 43 When deliberating a case, a collegial panel shall observe the rule of majority. The deliberations shall be recorded in writing, and the transcript shall be signed by the members of the collegial panel. Dissenting opinions in the deliberations must be truthfully entered in the transcript.

Article 44 The judicial officers shall deal with all cases impartially and in accordance with the law.

The judicial officers shall not accept any treat or gift from the parties or their agents ad litem.

Any judicial officer who commits embezzlement, accepts bribes, engages in malpractice for personal benefits or who perverts the law in passing judgment shall be investigated for legal responsibility; if the act constitutes a crime, the offender shall be investigated for criminal responsibility according to the law.

### Chapter IV Withdrawal

Article 45 A judicial officer shall of himself withdraw from the case, and the parties thereto shall be entitled to apply orally or in writing for his withdrawal in any of the following circumstances:

- (1) he being a party to the case or a near relative of a party or an agent ad litem in the case;
- (2) he being an interested party in the case; or
- (3) he having some other kind of relationship with a party to the case, which might affect the impartiality of the trial.

The above provisions shall also apply to clerks, interpreters, expert witnesses and inspection personnel.

Article 46 In applying for the withdrawal, the party shall state the reason and submit the application at the beginning of the proceedings; the application may also be submitted before the closing of arguments in court if the reason for the withdrawal is known to him only after the proceedings begin.

Pending a decision by the people's court regarding the withdrawal applied for, the judicial officer concerned shall temporarily suspend his participation in the proceedings, with the exception, however, of cases that require the taking of emergency measures.

Article 47 The withdrawal of the presiding judge who is president of the court shall be decided by the judicial committee; the withdrawal of judicial officers shall be decided by the court president; and the withdrawal of other personnel by the presiding judge.

Article 48 The decision of a people's court on an application made by any party for withdrawal shall be made orally or in writing within three days after the application was made. If the applicant is not satisfied with the decision, he may apply for reconsideration which could be granted only once. During the period of reconsideration, the person whose withdrawal has been applied for shall not suspend his participation in the proceedings. The decision of a people's court on the reconsideration shall be made within three days after receiving the application and the applicant shall be notified of it accordingly.

## Chapter V Participants in Proceedings

### Section 1 Parties

Article 49 Any citizen, legal person and any other organization may become a party to a civil action.

Legal persons shall be represented by their legal representatives in the litigation. Other organizations shall be represented by their principal heads in the proceedings.

Article 50 Parties to an action shall have the right to appoint agents, apply for withdrawals, collect and provide evidence, proffer arguments, request conciliation, file an appeal and apply for execution.

Parties to an action may have access to materials pertaining to the case and make copies thereof and other legal documents pertaining to the case. The scope of and rules for consulting and making copies of them shall be specified by the Supreme People's Court.

Parties to an action must exercise their litigation rights in accordance with the law, observe the procedures and carry out legally effective written judgments or orders and conciliation statements.

Article 51 The two parties may reach a compromise of their own accord.

Article 52 The plaintiff may relinquish or modify his claims. The defendant may admit or rebut the claims and shall have the right to file counterclaims.

Article 53 When one party or both parties consist of two or more than two persons, their object of action being the same or of the same category and the people's court considers that, with the consent of the parties, the action can be tried combined, it is a joint action.

If a party of two or more persons to a joint action have common rights and obligations with respect to the object of action and the act of any one of them is recognized by the others of the party, such an act shall be valid for all the rest of the party; if a party of two or more persons have no common rights and obligations with respect to the object of action, the act of any one of them shall not be valid for the rest.

Article 54 If the persons comprising a party to a joint action is large in number, the party may elect representatives from among themselves to act for them in the litigation. The acts of such representatives in the litigation shall be valid for the party they represent. However, modification or waiver of claims or admission of the claims of the other party or pursuing a compromise with the other party by the representatives shall be subject to the consent of the party they represent.

Article 55 Where the object of action is of the same category and the persons comprising one of the parties is large but uncertain in number at the commencement of the action, the people's court may issue a public notice, stating the particulars and claims of the case and informing those entitled to participate in the action to register their rights with the people's court within a fixed period of time.

Those who have registered their rights with the people's court may elect representatives from among themselves to proceed with the litigation; if the election fails its purpose, such representatives may be determined by the people's court through consultation with those who have registered their rights with the court.

The acts of such representatives in the litigation shall be valid for the party they represent; however, modification or waiver of claims or admission of the claims of the other party or pursuing a compromise with the other party by the representatives shall be subject to the consent of the party they represent.

The judgments or written orders rendered by the people's court shall be valid for all those who have registered their rights with the court. Such judgments or written orders shall apply to those who have not registered their rights but have instituted legal proceedings during period of limitation of the action.

Article 56 If a third party considers that he has an independent claim to the object of action of both parties, he shall have the right to bring an action.

Where the outcome of the case will affect a third party's legal interest, such party, though having no independent claim to the object of action of both parties, may file a request to participate in the proceedings or the people's court shall notify the third party to participate. A third party that is to bear civil liability in accordance with the judgment of the people's court shall be entitled to the rights and obligations of a party in litigation.

## Section 2 Agents ad Litem

Article 57 Any person with no legal capacity to engage in litigation shall have his guardian or guardians as statutory agents to act for him in a lawsuit. If the statutory agents try to shift responsibility as agents ad litem upon one another, the people's court shall appoint one of them to represent the person in litigation.

Article 58 A party to an action, or statutory agent may appoint one or two persons to act as his agents ad litem.

A lawyer, a near relative of the party, a person recommended by a relevant social organization or a unit to which the party belongs or any other citizen approved by the people's court may be appointed as the party's agent ad litem.

Article 59 When a person appoints another to act on his behalf in litigation, he must submit to the people's court a power of attorney bearing his signature or seal.

The power of attorney must specify the matters entrusted and the powers conferred. An agent ad litem must obtain special powers from his principal to admit, waive or modify claims, or to compromise or to file a counterclaim or an appeal.

A power of attorney mailed or delivered through others by a citizen of the People's Republic of China residing abroad must be certified by the Chinese embassy or consulate accredited to that country. If there is no Chinese embassy or consulate in that country, the power of attorney must be certified by an embassy or a consulate of a third country accredited to that country that has diplomatic relations with the People's Republic of China, and then transmitted for authentication to the embassy or consulate of the People's Republic of China accredited to that third country, or it must be certified by a local patriotic overseas Chinese organization.

Article 60 A party to an action shall inform the people's court in writing if he changes or revokes the powers of an agent ad litem, and the court shall notify the other party of the change or revocation.

Article 61 A lawyer who serves as an agent ad litem and other agents ad litem shall have the right to investigate and collect evidence, and may have access to materials pertaining to the case. The scope of and rules for consulting materials pertaining to the case shall be specified by the Supreme People's Court.

Article 62 In a divorce case in which the parties to the action have been represented by their agents ad litem, the parties themselves shall still appear in court in person, unless they are incapable of expressing their own will. A party who is truly unable to appear in court due to a special reason shall submit his views in writing to the people's court.

## Chapter VI Evidence

Article 63 Evidence shall be classified as follows:

- (1) documentary evidence;
- (2) material evidence;
- (3) audio-visual material;
- (4) testimony of witnesses;
- (5) statements of the parties;
- (6) expert conclusions; and
- (7) records of inspection.

The above-mentioned evidence must be verified before it can be taken as a basis for ascertaining a fact.

Article 64 It is the duty of a party to an action to provide evidence in support of his allegations.

If, for objective reasons, a party and his agent ad litem are unable to collect the evidence by themselves or if the people's court considers the evidence necessary for the trial of the case, the people's court shall investigate and collect it.

The people's court shall, in accordance with the procedure prescribed by the law, examine and verify evidence comprehensively and objectively.

Article 65 The people's court shall have the right to make investigation and collect evidence from the relevant units or individuals; such units or individuals may not refuse to provide information and evidence.

The people's court shall verify the authenticity, examine and determine the validity of the certifying documents provided by the relevant units or individuals.

Article 66 Evidence shall be presented in court and cross-examined by the parties concerned. But evidence that involves State secrets, trade secrets and personal privacy shall be kept confidential. If it needs to be presented in court, such evidence shall not be presented in an open court session.

Article 67 The people's court shall take the acts, facts and documents legalized by notarization according to legal procedures as the basis for ascertaining facts, unless there is evidence to the contrary sufficient to invalidate the notarization.

Article 68 Any document submitted as evidence must be the original. Material evidence must also be original. If it is truly difficult to present the original document or thing, then reproductions, photographs, duplicates or extracts of the original may be submitted.

If a document in a foreign language is submitted as evidence, a Chinese translation must be appended.

Article 69 The people's court shall verify audio-visual materials and determine after their examination in the light of other evidence in the case whether they can be taken as a basis for ascertaining the facts.

Article 70 All units and individuals who have knowledge of a case shall be under the obligation of giving testimony in court. Responsible heads of the relevant units shall support the witnesses to give testimony. When it is truly difficult for a witness to appear in court, he may, with the consent of the people's court, submit a written testimony.

Any person who is incapable of expressing his will properly shall not give testimony.

Article 71 The people's court shall examine the statements of the parties concerned in the light of other evidence in the case to determine whether the statements can be taken as a basis for ascertaining the facts.

The refusal of a party to make statements shall not prevent the people's court from ascertaining the facts of a case on the basis of other evidence.

Article 72 When the people's court deems it necessary to make an expert evaluation of a problem of a technical nature, it shall refer the problem to a department authorized by the law for the evaluation. In the absence of such a department, the people's court shall appoint one to make the expert evaluation.

The authorized department and the experts designated by the department shall have the right to consult the case materials necessary for the evaluation and question the parties and witnesses when circumstances so require.

The authorized department and the experts it designated shall present a written conclusion of the evaluation duly sealed or signed by both. If the evaluation is made by an expert alone, the unit to which the expert belongs shall certify his status by affixing its seal to the expert's conclusion.

Article 73 When inspecting material evidence or a site, the inspector must produce his credentials issued by a people's court. He shall request the local grass-roots organization or the unit to which the party to the action belongs to send persons to participate in the inspection. The party

concerned or an adult member of his family shall be present; their refusal to appear on the scene, however, shall not hinder the inspection.

Upon notification by the people's court, the relevant units and individuals shall be under the obligation of preserving the site and assisting the inspection.

The inspector shall make a written record of the circumstances and results of the inspection, which shall be duly signed or sealed by the inspector, the party concerned and the participants requested to be present.

Article 74 Under circumstances where there is a likelihood that evidence may be destroyed or lost, or difficult to obtain later, the participants in the proceedings may apply to the people's court for preservation of the evidence. The people's court may also on its own initiative take measures to preserve such evidence.

## Chapter VII Time Periods and Service

### Section 1 Time Periods

Article 75 Time periods shall include those prescribed by the law and those designated by a people's court.

Time periods shall be calculated by the hour, the day, the month and the year. The hour and day from which a time period begins shall not be counted as within the time period.

If the expiration date of a time period falls on a holiday, then the day immediately following the holiday shall be regarded as the expiration date.

A time period shall not include travelling time. A litigation document that is mailed before the deadline shall not be regarded as overdue.

Article 76 In case of failure on the part of a party to an action to meet a deadline due to force majeure or for other justified reasons, the party concerned may apply for an extension of the time limit within 10 days after the obstacle is removed. The extension applied for shall be subject to approval by a people's court.

### Section 2 Service

Article 77 A receipt shall be required for every litigation document that is served and it shall bear the date of receipt noted by the signature or seal of the person on whom the document was served.

The date noted on the receipt by the person on whom the document was served shall be regarded as the date of service of the document.

Article 78 Litigation documents shall be sent or delivered directly to the person on whom they are to be served. If that person is a citizen, the documents shall, in case of his absence, be receipted by

an adult member of his family living with him. If the person on whom they are to be served is a legal person or any other organization, the documents shall be receipted by the legal representatives of the legal person or the principal heads of the other organization or anyone of the legal person or the other organization responsible for receiving such documents; if the person on whom they are to be served has an agent ad litem, the documents may be receipted by the agent ad litem; if the person on whom they are to be served has designated a person to receive litigation documents on his behalf and has informed the people's court of it, the documents may be receipted by the person designated.

The date put down in the receipt and signed by the adult family member living with the person or whom the litigation documents are to be served, or by the person responsible for receiving documents of a legal person or any other organization, or by the agent ad litem, or the person designated to receive documents shall be deemed the date of service of the documents.

Article 79 If the person on whom the litigation documents are to be served or the adult family member living with him refuses to receive the documents, the person serving the documents shall ask representatives from the relevant grass-roots organization or the unit to which the person on whom the documents are to be served belongs to appear on the scene, explain the situation to them, and record on the receipt the reasons of the refusal and the date of it. After the person serving the documents and the witnesses have affixed their signatures or seals to the receipt, the documents shall be left at the place where the person on whom they are to be served lives and the service shall be deemed completed.

Article 80 If direct service proves to be difficult, service of litigation documents may be entrusted to another people's court, or done by mail. If the documents are served by mail, the date stated on the receipt for postal delivery shall be deemed the date of service of the documents.

Article 81 If the person on whom the litigation documents are to be served is a serviceman, the documents shall be forwarded to him through the political organ of the unit at or above the regimental level in the force to which he belongs.

Article 82 If the person on whom the litigation documents are to be served is in imprisonment, the documents shall be forwarded to him through the prison authorities or the unit of reform through labour where the person is serving his term.

If the person on whom the litigation documents are to be served is undergoing rehabilitation through labour, the documents shall be forwarded to him through the unit of his rehabilitation through labour.

Article 83 The organization or unit that receives the litigation documents to be forwarded must immediately deliver them to and have them receipted by the person on whom they are to be served. The date stated on the receipt shall be deemed the date of service of the documents.

Article 84 If the whereabouts of the person on whom the litigation documents are to be served is unknown, or if the documents cannot be served by the other methods specified in this Section, the documents shall be served by public announcement. Sixty days after the public announcement is made, the documents shall be deemed to have been served.



The reasons for service by public announcement and the process gone through shall be recorded in the case files.

## Chapter VIII Conciliation

Article 85 In the trial of civil cases, the people's court shall distinguish between right and wrong on the basis of the facts being clear and conduct conciliation between the parties on a voluntary basis.

Article 86 When a people's court conducts conciliation, a single judge or a collegial panel may preside over it. Conciliation shall be conducted on the spot as much as possible.

When a people's court conducts conciliation, it may employ simplified methods to notify the parties concerned and the witnesses to appear in court.

Article 87 When a people's court conducts conciliation, it may invite the units or individuals concerned to come to its assistance. The units or individuals invited shall assist the people's court in conciliation.

Article 88 A settlement agreement reached between the two parties through conciliation must be of their own free will and without compulsion. The content of the settlement agreement shall not contravene the law.

Article 89 When a settlement agreement through conciliation is reached, the people's court shall draw up a conciliation statement. The conciliation statement shall clearly set forth the claims, the facts of the case, and the result of the conciliation.

The conciliation statement shall be signed by the judge and the court clerk, sealed by the people's court, and served on both parties.

Once it is receipted by the two parties concerned, the conciliation statement shall become legally effective.

Article 90 The people's court need not draw up a conciliation statement for the following cases when a settlement agreement is reached through conciliation:

- (1) divorce cases in which both parties have become reconciled after conciliation;
- (2) cases in which adoptive relationship has been maintained through conciliation;
- (3) cases in which the claims can be immediately satisfied; and
- (4) other cases that do not require a conciliation statement.

Any settlement agreement that needs no conciliation statement shall be entered into the written record and shall become legally effective after being signed or sealed by both parties concerned, by the judge and by the court clerk.

Article 91 If no agreement is reached through conciliation or if either party backs out of the settlement agreement before the conciliation statement is served, the people's court shall render a judgment without delay.

#### Chapter IX Property Preservation and Advance Execution

Article 92 In the cases where the execution of a judgment may become impossible or difficult because of the acts of either party or for other reasons, the people's court may, at the application of the other party, order the adoption of measures for property preservation. In the absence of such application, the people's court may of itself, when necessary, order the adoption of measures for property preservation.

In adopting property preservation measures, the people's court may enjoin the applicant to provide security; if the applicant fails to do so, his application shall be rejected.

After receiving an application, the people's court must, if the case is urgent, make an order within 48 hours; if the order for the adoption of property preservation measures is made, the execution thereof shall begin immediately.

Article 93 Any interested party whose lawful rights and interests would, due to urgent circumstances, suffer irretrievable damage without immediately applying for property preservation, may, before filing a lawsuit, apply to the people's court for the adoption of property preservation measures. The applicant must provide security; if he fails to do so, his application shall be rejected.

After receiving an application, the people's court must make an order within 48 hours; if the court orders the adoption of property preservation measures, the execution thereof shall begin immediately.

If the applicant fails to bring an action within 15 days after the people's court has adopted the preservation measures, the people's court shall cancel the property preservation.

Article 94 Property preservation shall be limited to the scope of the claims or to the property relevant to the case.

Property preservation shall be effected by sealing up, distraining, freezing or other methods as prescribed by the law.

After the people's court has frozen the property, it shall promptly notify the person whose property has been frozen.

The property that has already been sealed up or frozen shall not be sealed up or frozen for a second time.

Article 95 If the person against whom the application for property preservation is made provides security, the people's court shall cancel the property preservation.

Article 96 If an application for property preservation is wrongfully made, the applicant shall compensate the person against whom the application is made for any loss incurred from property preservation.

Article 97 The people's court may, upon application of the party concerned, order advance execution in respect of the following cases:

- (1) those involving claims for alimony, support for children or elders, pension for the disabled or the family of a decedent, or expenses for medical care;
- (2) those involving claims for remuneration for labour; and
- (3) those involving urgent circumstances that require advance execution.

Article 98 Cases in which advance execution is ordered by the people's court shall meet the following conditions:

- (1) the relationship of rights and obligations between the parties concerned is clear and definite, and denial of advance execution would seriously affect the livelihood or production operations of the applicant; and
- (2) the person against whom the application for advance execution is made is capable of fulfilling his obligations.

The people's court may enjoin the applicant to provide security; if the applicant fails to do so, his application shall be rejected. If the applicant loses the lawsuit, he shall compensate the person against whom the application is made for any loss of property incurred from the advance execution.

Article 99 If the party concerned is not satisfied with the order made on property preservation or execution, he may apply for reconsideration which could be granted only once. Execution of the order shall not be suspended during the time of reconsideration.

## Chapter X Compulsory Measures Against Obstruction of Civil Proceedings

Article 100 If a defendant is required to appear in court, but, having been served twice with summons, still refuses to do so without justified reason, the people's court may constrain him to appear in court by a peremptory writ.

Article 101 Participants and other persons in the court proceedings shall abide by the court rules.

If a person violates the court rules, the people's court may reprimand him, or order him to leave the courtroom, or impose a fine on or detain him.

A person who seriously disrupts court order by making an uproar in the court or rushing at it, or insulting, slandering, threatening, or assaulting the judicial officers, shall be investigated for

criminal responsibility by the people's court according to the law; if the offence is a minor one, the offender may be detained or a fine imposed on him.

Article 102 If a participant or any other person in the proceedings commits any one of the following acts, the people's court shall, according to the seriousness of the act, impose a fine on him or detain him; if the act constitutes a crime, the offender shall be investigated for criminal responsibility according to law.

- (1) forging or destroying important evidence, which would obstruct the trial of a case by the people's court;
- (2) using violence, threats or subornation to prevent a witness from giving testimony, or instigating, suborning, or coercing others to commit perjury;
- (3) concealing, transferring, selling or destroying property that has been sealed up or distrained, or property of which an inventory has been made and which has been put under his care according to court instruction, or transferring the property that has been frozen;
- (4) insulting, slandering, incriminating with false charges, assaulting or maliciously retaliating against judicial officers or personnel, participants in the proceedings, witnesses, interpreters, evaluation experts, inspectors, or personnel assisting in execution;
- (5) using violence, threats or other means to hinder judicial officers or personnel from performing their duties; or
- (6) refusing to carry out legally effective judgments or orders of the people's court.

With respect to a unit that commits any one of the acts specified above, the people's court may impose a fine on or detain its principal heads or the person who are held actually responsible for the act; if the act constitutes a crime, investigations for criminal responsibility shall be made according to the law.

Article 103 Where a unit which is under an obligation to assist in investigation and execution commits any one of the following acts, the people's court may, apart from enjoining it to perform its obligation, also impose a fine:

- (1) refusing or obstructing the investigation and collection of evidence by the people's court;
- (2) refusing by banks, credit cooperatives or other units dealing with savings deposit, after receiving a notice for assistance in execution from the people's court, to assist in inquiring into, freezing or transferring the relevant deposit.
- (3) refusing by the unit concerned, after receiving a notice for assistance in execution from the people's court, to assist in withholding the income of the party subject to execution, in going through the formalities of transferring the relevant certificates of property rights or in transferring the relevant negotiable instruments, certificates, or other property; or
- (4) refusing to provide other obligatory assistance in the execution.

With respect to a unit that commits any one of the acts specified above, the people's court may impose a fine on its principal heads or the persons who are held actually responsible for the act. The people's court may also put forward a judicial proposal to the supervisory organ or any relevant organ for the imposition of disciplinary sanctions.

Article 104 A fine on an individual shall not exceed Renminbi 1,000 yuan. A fine on a unit shall not be less than 1,000 yuan and shall not exceed 30,000 yuan.

The period of detention shall not be longer than 15 days.

The people's court shall deliver detained persons to a public security organ for custody. The people's court may decide to advance the time of release, if the detainee admits and mends his wrongdoings.

Article 105 Constrained appearance in court, imposition of a fine or detention shall be subject to the approval of the president of the people's court.

A peremptory writ shall be issued for constraining appearance in court.

A decision in writing shall be made for the imposition of a fine or detention. The offender, if dissatisfied with the decision, may apply to a people's court at a higher level for reconsideration which could be granted only once. The execution of the decision shall not be suspended during the time of reconsideration.

Article 106 Decision on the adoption of compulsory measures against obstruction of proceedings shall be made only by the people's court. Any unit or individual that extorts repayment of a debt by illegal detention of a person or illegal distraintment of property shall be investigated for criminal responsibility according to the law, or shall be punished with detention or a fine.

## Chapter XI Litigation Costs

Article 107 Any party filing a civil lawsuit shall pay court costs according to the rules. For property cases, the party shall pay other fees in addition to the court costs.

Any party that has genuine difficulty in paying litigation costs may, according to the relevant rules, apply to the people's court for deferment or reduction of the payment or for its exemption.

Particulars for payment of litigation costs shall be laid down separately.

## Part Two Trial Procedure

## Chapter XII Ordinary Procedure of First Instance

## Section 1 Bringing a Lawsuit and Entertaining a Case

Article 108 The following conditions must be met when a lawsuit is brought:

- (1) the plaintiff must be a citizen, legal person or any other organization that has a direct interest in the case;
- (2) there must be a definite defendant;
- (3) there must be specific claim or claims, facts, and cause or causes for the suit; and
- (4) the suit must be within the scope of acceptance for civil actions by the people's courts and under the jurisdiction of the people's court where the suit is entertained.

Article 109 When a lawsuit is brought, a statement of complaint shall be submitted to the people's court, and copies of the statement shall be provided according to the number of defendants.

If the plaintiff has genuine difficulty in presenting the statement of complaint in writing, he may state his complaint orally; the people's court shall transcribe the complaint and inform the other party of it accordingly.

Article 110 A statement of complaint shall clearly set forth the following:

- (1) the name, sex, age, ethnic status, occupation, work unit and home address of the parties to the case; if the parties are legal persons or any other organizations, their names, addresses and the names and posts of the legal representatives or the principal heads.
- (2) the claim or claims of the suit, the facts and grounds on which the suit is based; and
- (3) the evidence and its source, as well as the names and home addresses of the witnesses.

Article 111 The people's court must entertain the lawsuits filed in conformity with the provisions of Article 108 of this Law. With respect to lawsuits described below, the people's court shall deal with them in the light of their specific circumstances:

- (1) For a lawsuit within the scope of administrative actions in accordance with the provisions of the Administrative Procedure Law, the people's court shall advise the plaintiff to institute administrative proceedings;
- (2) If, according to the law, both parties have on a voluntary basis reached a written agreement to submit their contract dispute to an arbitral organ for arbitration, they may not institute legal proceedings in a people's court. The people's court shall advise the plaintiff to apply to the arbitral organ for arbitration;
- (3) In case of disputes which, according to the law, shall be dealt with by other organs, the people's court shall advise the plaintiff to apply to the relevant organ for settlement;

(4) With respect to cases that are not under its jurisdiction, the people's court shall advise the plaintiff to bring a lawsuit in the competent people's court;

(5) With respect to cases in which a judgment or order has already taken legal effect, but either party brings a suit again, the people's court shall advise that party to file an appeal instead, except when the order of the people's court is one that permits the withdrawal of a suit;

(6) with respect to an action that may not be filed within a specified period according to the law, it shall not be entertained, if it is filed during that period.

(7) In a divorce case in which a judgment has been made disallowing the divorce, or in which both parties have become reconciled after conciliation, or in a case concerning adoptive relationship in which a judgment has been made or conciliation has been successfully conducted to maintain the adoptive relationship, if the plaintiff files a suit again within six months in the absence of any new developments or new reasons, it shall not be entertained.

Article 112 When a people's court receives a statement of complaint or an oral complaint and finds after examination that it meets the requirements for acceptance, the court shall place the case on the docket within seven days and notify the parties concerned; if it does not meet the requirements for acceptance, the court shall make an order within seven days to reject it. The plaintiff, if not satisfied with the order, may file an appeal.

## Section 2 Preparations for Trial

Article 113 The people's court shall send a copy of the statement of complaint to the defendant within five days after docketing the case, and the defendant shall file a defence within 15 days from receipt of the copy of the statement of complaint.

When the defendant files a defence, the people's court shall send a copy of it to the plaintiff within five days from its receipt. Failure by the defendant to file a defence shall not prevent the case from being tried by the people's court.

Article 114 The people's court shall, with respect to cases whose acceptance has been decided, inform the parties in the notification of acceptance and in the notification calling for response to the action of their relevant litigation rights and obligations of which the parties may likewise be informed orally.

Article 115 The parties shall be notified within three days after the members of the collegial panel are determined.

Article 116 The judicial officers must carefully examine and verify the case materials and carry out investigations and collection of necessary evidence.

Article 117 The personnel sent by a people's court to conduct investigations shall produce their credentials before the person to be investigated.

The written record of an investigation shall be checked by the person investigated and then signed or sealed by both the investigator and the investigated.

Article 118 A people's court may, when necessary, entrust a people's court in another locality with the investigations.

The entrusting people's court shall clearly set out the matters for and requirements of the entrusted investigations. The entrusted people's court may on its own initiative conduct supplementary investigations.

The entrusted people's court shall complete the investigations within 30 days after receiving the commission in writing. If for some reason it cannot complete the investigations, the said people's court shall notify the entrusting people's court in writing within the above-mentioned time limit.

Article 119 If a party who must participate in a joint action fails to participate in the proceedings, the people's court shall notify him to participate.

### Section 3 Trial in Court

Article 120 Civil cases shall be tried in public, except for those that involve State secrets or personal privacy or are to be tried otherwise as provided by the law.

A divorce case or a case involving trade secrets may not be heard in public if a party so requests.

Article 121 For civil cases, the people's court shall, whenever necessary, go on circuit to hold trials on the spot.

Article 122 For civil cases, the people's court shall notify the parties and other participants in the proceedings three days before the opening of a court session. If a case is to be tried in public, the names of the parties, the cause of action and the time and location of the court session shall be announced publicly.

Article 123 Before a court session is called to order, the court clerk shall ascertain whether or not the parties and other participants in the proceedings are present and announce the rules of order of the court.

At the beginning of a court session, the presiding judge shall check the parties present, announce the cause of action and the names of the judicial officers and court clerks, inform the parties of their relevant litigation rights and obligations and ask the parties whether or not they wish to apply for the withdrawal of any court personnel.

Article 124 Court investigation shall be conducted in the following order:

- (1) statements by the parties;
- (2) informing the witnesses of their rights and obligations, giving testimony by the witnesses and reading of the written statements of absentee witnesses;
- (3) presentation of documentary evidence, material evidence and audio-visual material;
- (4) reading of expert conclusions; and
- (5) reading of records of inspection.



Article 125 The parties may present new evidence during a court session.

With the permission of the court, the parties may put questions to witnesses, expert witnesses and inspectors.

Any request by the parties concerned for a new investigation, expert evaluation or inspection shall be subject to the approval of the people's court.

Article 126 Additional claims by the plaintiff, counterclaims by the defendant and third-party claims related to the case may be tried in combination.

Article 127 Court debate shall be conducted in the following order:

- (1) oral statements by the plaintiff and his agents ad litem;
- (2) defence by the defendant and his agents ad litem;
- (3) oral statement or defence by the third party and his agents ad litem;
- (4) debate between the two sides.

At the end of the court debate, the presiding judge shall ask each side, first the plaintiff, then the defendant, and then the third party, for their final opinion respectively.

Article 128 At the end of the court debate, a judgment shall be made according to the law. Where conciliation is possible prior to the rendering of a judgment, conciliation efforts may be made; if conciliation proves to be unsuccessful, a judgment shall be made without delay.

Article 129 If a plaintiff, having been served with a summons, refuses to appear in court without justified reasons, or if he withdraws during a court session without the permission of the court, the case may be considered as withdrawn by him; if the defendant files a counterclaim in the mean time, the court may make a judgment by default.

Article 130 If a defendant, having been served with a summons, refuses to appear in court without justified reasons, or if he withdraws during a court session without the permission of the court, the court may make a judgment by default.

Article 131 If a plaintiff applies for withdrawal of the case before the judgment is pronounced, the people's court shall decide whether to approve or disapprove it.

If withdrawal of the case is not allowed by an order of the people's court, and the plaintiff, having been served with a summons, refuses to appear in court without justified reasons, the people's court may make a judgment by default.

Article 132 Under any of the following circumstances, the trial may be adjourned:

- (1) the parties concerned and other participants in the proceedings required to appear in court fail to do so for justified reasons;
- (2) any party concerned makes an extempore application for the withdrawal of a judicial officer; or

- (3) it is necessary to summon new witnesses to court, collect new evidence, make a new expert evaluation, new inspection, or to make a supplementary investigation; or
- (4) other circumstances that warrant the adjournment.

Article 133 The court clerk shall make a written record of the entire court proceedings, which shall be signed by him and the judicial officers.

The court record shall be read out in court, or else the parties and other participants in the proceedings may be notified to read the record while in court or within five days. If they consider that there are omissions or errors in the record of their own statements, the parties or other participants in the proceedings shall have the right to apply for rectifications. If such rectifications are not made, the application shall be placed on record in the case file.

The court record shall be signed or sealed by the parties and other participants in the proceedings. Refusal to do so shall be put on record in the case file.

Article 134 The people's court shall publicly pronounce its judgment in all cases, whether publicly tried or not.

If a judgment is pronounced in court, the written judgment shall be issued and delivered within ten days; if a judgment is pronounced later on a fixed date, the written judgment shall be issued and given immediately after the pronouncement.

Upon pronouncement of a judgment, the parties concerned must be informed of their right to file an appeal, the time limit for appeal and the court to which they may appeal.

Upon pronouncement of a divorce judgement, the parties concerned must be informed not to remarry before the judgment takes legal effect.

Article 135 A people's court trying a case in which the ordinary procedure is followed, shall conclude the case within six months after docketing the case. Where an extension of the period is necessary under special circumstances, a six-month extension may be allowed subject to the approval of the president of the court. Further extension, if needed, shall be reported to the people's court at a higher level for approval.

#### Section 4 Suspension and Termination of Legal Proceedings

Article 136 Legal Proceedings shall be suspended in any of the following circumstances:

- (1) one of the parties dies and it is necessary to wait for the heir or heiress to make clear whether to participate or not in the proceedings;
- (2) one of the parties has lost the capacity to engage in litigation and his agent ad litem has not been designated yet;
- (3) the legal person or any other organization as one of the parties has dissolved, and the successor to its rights and obligations has not been determined yet;
- (4) one of the parties is unable to participate in the proceedings for reasons of force majeure;

- (5) the adjudication of the case pending is dependent on the results of the trial of another case that has not yet been concluded; or
- (6) other circumstances that warrant the suspension of the litigation.

The proceedings shall resume after the causes of the suspension have been eliminated.

Article 137 Legal proceedings shall be terminated in any of the following circumstances:

- (1) the plaintiff dies without a successor, or the successor waives the right to litigate;
- (2) the decedent leaves no estate, nor any one to succeed to his obligations;
- (3) one of the parties in a divorce case dies; or
- (4) one of the parties dies who is a claimant to alimony, support for elders or children or to the termination of adoptive relationship.

#### Section 5 Judgment and Order

Article 138 A judgment shall clearly set forth the following:

- (1) cause of action, the claims, facts and cause or causes of the dispute;
- (2) the facts and causes as found in the judgment and the basis of application of the law;
- (3) the outcome of adjudication and the costs to be borne; and
- (4) the time limit for filing an appeal and the appellate court with which the appeal may be filed.

The judgment shall be signed by the judicial officers and the court clerk, with the seal of the people's court affixed to it.

Article 139 If some of the facts in a case being tried by the people's court are already evident, the court may pass judgment on that part of the case first.

Article 140 An order in writing is to be made in any of the following conditions:

- (1) refusal to entertain a case;
- (2) objection to the jurisdiction of a court;
- (3) rejection of a complaint;
- (4) property preservation and advance execution;
- (5) approval or disapproval of withdrawal of a suit;
- (6) suspension or termination of legal proceedings;
- (7) correction of errata in the judgment;
- (8) suspension or termination of execution;

(9) refusal to enforce an arbitration award;

(10) refusal to enforce a document of a notary office evidencing the rights of a creditor and entitling him to its compulsory execution;

(11) other matters to be decided in the form of an order in writing.

An appeal may be lodged against an order in writing in Items (1), (2) and (3) mentioned above.

An order in writing shall be signed by the judicial officers and the court clerk, with the seal of the people's court affixed to it. If it is issued orally, the order shall be entered in the record.

Article 141 All judgments and written orders of the Supreme People's Court, as well as judgments and written orders that may not be appealed against according to the law or that have not been appealed against within the prescribed time limit, shall be legally effective.

### Chapter XIII Summary Procedure

Article 142 When trying simple civil cases in which the facts are evident, the rights and obligations clear and the disputes trivial in character, the basic people's courts and the tribunals dispatched by them shall apply the provisions of this Chapter.

Article 143 In simple civil cases, the plaintiff may lodge his complaint orally.

The two parties concerned may at the same time come before a basic people's court or a tribunal dispatched by it for a solution of their dispute. The basic people's court or the tribunal it dispatched may try the case immediately or set a date for the trial.

Article 144 In trying a simple civil case, the basic people's court or the tribunal dispatched by it may use simplified methods to summon at any time the parties and witnesses.

Article 145 Simple civil cases shall be tried by a single judge alone and the trial of such cases shall not be bound by the provisions of Articles 122, 124, and 127 of this Law.

Article 146 The people's court trying a case in which summary procedure is followed shall conclude the case within three months after placing the case on the docket.

### Chapter XIV Procedure of Second Instance

Article 147 If a party refuses to accept a judgment of first instance of a local people's court, he shall have the right to file an appeal with the people's court at the next higher level within 15 days after the date on which the written judgment was served.

If a party refuses to accept a written order of first instance of a local people's court, he shall have the right to file an appeal with a people's court at the next higher level within 10 days after the date on which the written order was served.

Article 148 For filing an appeal, a petition for the purpose shall be submitted. The content of the appeal petition shall include the names of the parties, the names of the legal persons and their legal representatives or names of other organizations and their principal heads; the name of the people's court where the case was originally tried; file number of the case and the cause of action; and the claims of the appeal and the reasons.

Article 149 The appeal petition shall be submitted through the people's court which originally tried the case, and copies of it shall be provided according to the number of persons in the other party or of the representatives thereof.

If a party appeals directly to a people's court of second instance, the said court shall within five days transmit the appeal petition to the people's court which originally tried the case.

Article 150 The people's court which originally tried the case shall, within five days after receiving the appeal petition, serve a copy of it on the other party, who shall submit his defence within 15 days from the receipt of such copy. The people's court shall, within five days after receiving the defence, serve a copy of it on the appellant. Failure by the other party to submit a defence shall not prevent the case from being tried by the people's court.

After receiving the appeal petition and the defence, the people's court which originally tried the case shall, within five days, deliver them together with the entire case file and evidence to the people's court of second instance.

Article 151 With respect to an appealed case, the people's court of second instance shall review the relevant facts and the application of the law.

Article 152 With respect to a case on appeal, the people's court of second instance shall form a collegial panel to conduct the trial. After verification of the facts of the case through consulting the files, making investigations and questioning the parties, if the collegial panel considers that it is not necessary to conduct a trial, it may make a judgment or a written order directly.

The people's court of second instance may try a case on appeal at its own site or in the place where the case originated or where the people's court which originally tried the case is located.

Article 153 After trying a case on appeal, the people's court of second instance shall, in the light of the following situations, dispose of it accordingly:

- (1) if the facts were clearly ascertained and the law was correctly applied in the original judgment, the appeal shall be rejected in the form of a judgment and the original judgment shall be affirmed;
- (2) if the application of the law was incorrect in the original judgment, the said judgment shall be amended according to the law;
- (3) if in the original judgment the facts were incorrectly or not clearly ascertained and the evidence was insufficient, the people's court of second instance shall make a written order to set aside the

judgment and remand to case to the original people's court for retrial, or the people's court of second instance may amend the judgment after investigating and clarifying the facts; or

(4) if there was violation of legal procedure in making the original judgment, which may have affected correct adjudication, the judgment shall be set aside by a written order and the case remanded to the original people's court for retrial.

The parties concerned may appeal against the judgment or written order rendered in a retrial of their case.

Article 154 The people's court of second instance shall decide in the form of orders in writing all cases of appeal against the written orders made by the people's courts of first instance.

Article 155 In dealing with a case on appeal, a people's court of second instance may conduct conciliation. If an agreement is reached through conciliation, a conciliation statement shall be made and signed by the judicial officers and the court clerk, with the seal of the people's court affixed to it. After the conciliation statement has been served, the original judgment of the lower court shall be deemed as set aside.

Article 156 If an appellant applies for withdrawal of his appeal before a people's court of second instance pronounces its judgment, the court shall decide whether to approve the application or not.

Article 157 In the trial of a case on appeal, the people's court of second instance shall, apart from observing the provisions of this Chapter, follow the ordinary procedure for trials of first instance.

Article 158 The judgment and the written order of a people's court of second instance shall be final.

Article 159 The people's court trying a case on appeal shall conclude the case within three months after docketing the case. Any extension of the period necessitated by special circumstances shall be subject to the approval of the president of the court.

The people's court trying a case on appeal against a written order shall, within 30 days after docketing the case for second instance trial, make a written order which is final.

## Chapter XV Special Procedure

### Section 1 General Provisions

Article 160 When the people's courts try cases concerning the qualification of voters, the declaration of a person as missing or dead, the adjudgment of legal incapacity or restricted legal capacity of a citizen and the adjudgment of a property as ownerless, the provisions of this Chapter shall apply. For matters not covered in this Chapter, the relevant provisions of this Law and other laws shall apply.

Article 161 In cases tried in accordance with the procedure provided in this Chapter, the judgment of first instance shall be final. A collegial panel of judges shall be formed for the trial of any case

involving the qualification of voters or of any major, difficult or complicated case; other cases shall be tried by a single judge alone.

Article 162 If a people's court, while trying a case in accordance with the procedure provided in this Chapter, finds that the case involves a civil dispute over rights and interests, it shall make a written order to terminate the special procedure and inform the interested parties to otherwise institute an action.

Article 163 A people's court trying a case in which special procedure is followed shall conclude the case within 30 days after placing the case on the docket or within 30 days after expiration of the period stated in the public notice. Any extension of the time limit necessitated by special circumstances shall be subject to the approval of the president of the court, excepting, however, a case concerning the qualification of voters.

## Section 2 Cases Concerning the Qualification of Voters

Article 164 If a citizen refuses to accept an election committee's decision on an appeal concerning his voting qualification, he may, five days before the election day, bring a suit in the basic people's court located in the electoral district.

Article 165 After entertaining a case concerning voting qualification, a people's court must conclude the trial before the election day.

The party who brings the suit, the representative of the election committee and other citizens concerned must participate in the proceedings.

The written judgment of the people's court shall be served on the election committee and the party who brings the suit before the election day; other citizens concerned shall be notified of the judgment.

## Section 3 Cases Concerning the Declaration of a Person as Missing or Dead

Article 166 With respect to a citizen whose whereabouts are unknown for two years in full, if the interested party applies for declaring the person as missing, the application shall be filed with the basic people's court in the locality where the missing person has his domicile.

The application shall clearly state the facts and time of the disappearance of the person missing as well as the motion; documentary evidence from a public security organ or other relevant organs concerning the disappearance of the citizen shall be appended to the application.

Article 167 With respect to a citizen whose whereabouts are unknown for four years in full or whose whereabouts are unknown for two years in full after an accident in which he was involved, or with respect to a citizen whose whereabouts are unknown after such an accident, and, upon proof furnished by the relevant authorities that it is impossible for him to survive, if the interested party applies for declaring such person as dead, the application shall be filed with the basic people's court in the locality where the missing person has his domicile.

The application shall clearly state the facts and time of the disappearance as well as the motion; documentary evidence from a public security organ or other relevant organs concerning the disappearance of the citizen shall be appended to the application.

Article 168 After entertaining a case concerning the declaration of a person as missing or dead, the people's court shall issue a public notice in search of the person missing. The period of the public notice for declaring a person as missing shall be three months, and that for declaring a person as dead shall be one year. Where a citizen's whereabouts are unknown after an accident in which he was involved and, upon proof furnished by the relevant authorities that it is impossible for him to survive, the period of the public notice for proclaiming such person as dead shall be three months.

On the expiration of the period of the public notice, the people's court shall, depending on whether the fact of the missing or death of the person has been confirmed, make a judgment declaring the person missing or dead or make a judgment rejecting the application.

Article 169 If a person who has been declared missing or dead by a people's court reappears, the people's court shall, upon the application of that person or of an interested party, make a new judgment and annul the previous one.

#### Section 4 Cases Concerning the Adjudgment of Legal Incapacity or Restricted Legal Capacity of Citizens

Article 170 An application for adjudgment of legal incapacity or restricted legal capacity of a citizen shall be filed by the citizen's near relatives or any other interested party with the basic people's court in the locality where the citizen has his domicile.

The application shall clearly state the fact and grounds of the citizen's legal incapacity or restricted legal capacity.

Article 171 After accepting such an application, the people's court shall, when necessary, have an expert evaluation of the citizen of whom the determination of legal incapacity or restricted legal capacity is sought; if the applicant has already provided an evaluation conclusion, the people's court shall examine such conclusion.

Article 172 In the trial by the people's court of a case for the determination of legal incapacity or restricted legal capacity of a citizen, a near relative of the citizen shall be his agent, the applicant being excluded. If the near relatives of the citizen shift responsibility onto one another, the people's court shall appoint one of them as agent for the citizen. If the citizen's condition of health permits, the people's court shall also seek the opinion of the citizen on the matter.

If, through the trial, the people's court finds that the application is based on facts, a judgment of legal incapacity or restricted legal capacity of the citizen shall be made; if the court finds that the application is not based on facts, it shall make a judgment rejecting the application.

Article 173 If, upon the application of a person who has been determined as one of legal incapacity or restricted legal capacity or upon the application of his guardian, the people's court confirms that the causes of that person's legal incapacity or restricted legal capacity have been eliminated, a new judgment shall be made annulling the previous one.



## Section 5 Cases Concerning the Determination of Property as Ownerless

Article 174 An application for determining a property as ownerless shall be filed by a citizen, legal person or any other organization with the basic people's court in the place where the property is located.

The application shall clearly state the type and quantity of the property and the grounds on which the application for determining the property as ownerless is filed.

Article 175 The people's court shall, after accepting such an application and upon examination and verification of it, issue a public notice calling on the owner to claim the property. If no one claims the property one year after the issue of the public notice, the people's court shall make a judgment determining the property as ownerless and turn it over to the State or the collective concerned.

Article 176 If, after a property has been determined by a judgment as ownerless, the owner of the property or his successor appears, such a person may file a claim for the property within the period of limitation specified in the General Principles of the Civil Law. The people's court shall, after examination and verification of the claim, make a new judgment, annulling the previous one.

## Chapter XVI Procedure for Trial Supervision

Article 177 If the president of a people's court at any level finds definite error in a legally effective judgment or written order of his court and deems it necessary to have the case retried, he shall refer it to the judicial committee for discussion and decision.

If the Supreme People's Court finds definite error in a legally effective judgment or written order of a local people's court at any level, or if a people's court at a higher level finds some definite error in a legally effective judgment or written order of a people's court at a lower level, it shall respectively have the power to bring the case up for trial by itself or direct the people's court at a lower level to conduct a retrial.

Article 178 If a party to an action considers that there is error in a legally effective judgment or written order, he may apply to the people's court which originally tried the case or to a people's court at the next higher level for a retrial; however, execution of the judgment or order shall not be suspended.

Article 179 If an application made by a party meets any of the following conditions, the people's court shall retry the case:

- (1) there is sufficient new evidence to set aside the original judgment or written order;
- (2) the main evidence on which the facts were ascertained in the original judgment or written order was insufficient;
- (3) there was definite error in the application of the law in the original judgment or written order;
- (4) there was violation by the people's court of the legal procedure which may have affected the correctness of the judgment or written order in the case; or

(5) the judicial officers have committed embezzlement, accepted bribes, done malpractices for personal benefits and perverted the law in the adjudication of the case.

The people's court shall reject the application that meets none of the conditions specified above.

Article 180 With respect to a legally effective conciliation statement, if evidence furnished by a party proves that the conciliation violates the principle of voluntariness or that the content of the conciliation agreement violates the law, the party may apply for a retrial. If the foregoing proves true after its examination, the people's court shall retry the case.

Article 181 With respect to a legally effective judgement on dissolution of marriage, neither of the two parties shall apply for retrial.

Article 182 Application for a retrial made by a party must be submitted within two years after the judgment or written order becomes legally effective.

Article 183 When a decision is made to retry a case in accordance with the procedure for trial supervision, the execution of the original judgment shall be suspended by a written order which shall be signed by the president of the court with the seal of the people's court affixed to it.

Article 184 With respect to a case pending retrial by a people's court in accordance with the procedure for trial supervision, if the legally effective judgment or written order was made by a court of first instance, the case shall be tried in accordance with the procedure of first instance, and the parties concerned may appeal against the new judgment or order; if the legally effective judgment or written order was made by a court of second instance, the case shall be tried in accordance with the procedure of second instance, and the new judgment or written order shall be legally effective; if it is a case which was brought up for trial by a people's court at a higher level, it shall be tried in accordance with the procedure of second instance, and the new judgment or written order shall be legally effective.

The people's court shall form a new collegial panel for the purpose of the retrial.

Article 185 If the Supreme People's Procuratorate finds that a legally effective judgment or written order made by a people's court at any level involves any of the following circumstances, or if a people's procuratorate at a higher level finds that a legally effective judgment or written order made by a people's court at a lower level involves any of the following circumstances, the Supreme People's Procuratorate or the people's procuratorate at a higher level shall respectively lodge a protest in accordance with the procedure for trial supervision:

(1) the main evidence for ascertaining the facts in the previous judgment or written order was insufficient;

(2) there was definite error in the application of the law in the previous judgment or written order ;

(3) there was violation by the people's court of the legal procedure which may have affected the correctness of the judgment or written order; or

(4) the judicial officers have committed embezzlement, accepted bribes, done malpractice for personal benefits and perverted the law in the trial of the case.

If a local people's procuratorate at any level finds that a legally effective judgment or written order made by a people's court at the corresponding level involves any of the circumstances specified above, it shall refer the matter to the people's procuratorate at a higher level with the request that a protest be lodged by the latter in accordance with the procedure for trial supervision.

Article 186 Cases in which protest was made by the people's procuratorate shall be retried by the people's court.

Article 187 When a people's procuratorate decides to lodge a protest against a judgment or written order made by a people's court, it shall make the protest in writing.

Article 188 The people's court shall, in retrying a case in which protest was lodged by a people's procuratorate, notify the procuratorate to send representative to attend the court session.

#### Chapter XVII Procedure for Hastening Debt Recovery

Article 189 When a creditor requests payment of a pecuniary debt or recovery of negotiable instruments from a debtor, he may, if the following requirements are met, apply to the basic people's court that has jurisdiction for an order of payment:

- (1) no other debt disputes exist between the creditor and the debtor; and
- (2) the order of payment can be served on the debtor.

The application shall clearly state the requested amount of money or of the negotiable instruments and the facts and evidence on the basis of which the application is made.

Article 190 After the creditor has submitted his application, the people's court shall within five days inform the creditor whether it accepts the application or not.

Article 191 After accepting the application and upon examination of the facts and evidence provided by the creditor, the people's court shall, if the rights and obligations relationship between the creditor and the debtor is clear and legitimate, issue within 15 days after accepting the application, an order of payment to the debtor; if the application is unfounded, the people's court shall make an order to reject it.

The debtor shall, within 15 days after receipt of the order of payment, clear off his debts or submit to the people's court his dissent in writing.

If the debtor has neither dissented from nor complied with the order of payment within the period specified in the preceding paragraph, the creditor may apply to the people's court for execution.

Article 192 The people's court shall, on receiving the dissent in writing submitted by the debtor, make an order to terminate the procedure for hastening debt recovery and the order of payment shall of itself be invalidated. The creditor may bring an action in the people's court.

#### Chapter XVIII Procedure for Publicizing Public Notice for Assertion of Claims

Article 193 Any holder of a bill transferable by endorsement according to the law may, if the bill is stolen, lost, or destroyed, apply to the basic people's court of the place where the bill is to be paid for publication of public notice for assertion of claims. The provisions of this Chapter shall apply to other matters for which, according to the law, an application for publication of a public notice for assertion of claims may be made.

The applicant shall submit to the people's court an application which clearly states the main contents of the bill such as the face amount, the drawer, the holder, the endorser, and the facts and reasons in respect of the application.

Article 194 The people's court shall, upon deciding to accept the application, notify the payer concerned in the meantime to suspend the payment, and shall, within 3 days, issue a public notice for the interested parties to assert their rights. The period of the public notice shall be decided at the discretion of the people's court; however, it shall not be less than 60 days.

Article 195 The payer shall, upon receiving the notification by the people's court to suspend the payment, do so accordingly till the conclusion of the procedure for publicizing public notice for assertion of claims.

Within the period of the public notice, assignment of rights on the bill shall be void.

Article 196 Interested party or parties as claimants shall report their claims to the people's court within the period of the public notice.

After receiving the report on the claims by interested party or parties, the people's court shall make a written order to terminate the procedure for publicizing public notice for assertion of claims, and notify the applicant and the payer.

The applicant or the claimants may bring an action in the people's court.

Article 197 If no claim is asserted, the people's court shall make a judgment on the basis of the application to declare the bill in question null and void. The judgment shall be published and the payer notified accordingly. As of the date of publication of the judgment, the applicant shall be entitled to payment by the payer.

Article 198 If an interested party for justified reasons was unable to submit his claim to the people's court before the judgment is made, he may, within one year after the day he knows or should know the publication of the judgment, bring an action in the people's court which has made the judgment.

## Chapter XIX Procedure for Bankruptcy and Debt Repayment of Legal Person Enterprises

Article 199 If a legal person enterprise has suffered serious losses and is unable to repay the debts at maturity, the creditors may apply to a people's court for declaring the debtor bankrupt for debts to be repaid; the debtor may likewise apply to a people's court for declaring bankruptcy for debts to be repaid.

Article 200 After making an order to declare the initiation of the bankruptcy and debt repayment proceedings, the people's court shall notify the debtor and the known creditors within ten days and also make a public announcement.

Creditors who have been notified shall, within 30 days after receiving the notice, and those who have not been notified shall, within three months after the date of the announcement, lodge their claims with the people's court. Creditors who fail to lodge their claims during the respective periods shall be deemed to have abandoned their rights.

Creditors may organize a creditors' meeting to discuss and approve of a formula for the disposition and distribution of bankrupt property, or for a composition agreement.

Article 201 The people's court may appoint a liquidation commission formed by relevant state organs and persons concerned. The liquidation commission shall take charge of the custody of the bankrupt property, its liquidation, assessment, disposition and distribution. The liquidation commission may also engage in necessary activities of a civil nature according to the law.

The liquidation commission shall be responsible and report its work to the people's court.

Article 202 If the legal person enterprise and the creditors reach a composition agreement, the people's court shall, after approving the agreement, make a public announcement of it and terminate the bankruptcy and debt repayment proceedings. The composition agreement shall be legally effective as of the date of the public announcement.

Article 203 With respect to the property mortgaged or otherwise used as security for bank loans or other obligations, the bank and other creditors shall have priority in the repayment of debts as regards the property mortgaged or used as security for other kinds of obligations. If the money value of the property mortgaged or used as security for other kinds of obligations exceeds the amount of loans secured, the surplus shall go to the bankrupt property for debt repayment.

Article 204 After deduction of bankruptcy proceedings expenses from the bankrupt property, first repayment shall be made in the following order of priority:

- (1) wages and salaries of staff and workers and labour insurance expenses that are owed by the bankrupt enterprise;
- (2) taxes owed by the bankrupt enterprise;
- (3) claims by creditors in the bankruptcy proceedings.

Where the bankrupt property is insufficient to meet the repayment claims of the same order of priority, it shall be distributed on a pro-rata basis.

Article 205 The debt repayment of a bankrupt legal person enterprise shall be under the jurisdiction of the people's court of the place where the legal person enterprise is located.

Article 206 The provisions of the Law of the People's Republic of China on Enterprise Bankruptcy shall apply to bankruptcy and debt repayment of enterprises owned by the whole people.

The provisions of this Chapter shall not apply to non-legal person enterprises, individual businesses, leaseholding farm households and partnerships by private individuals.

### Part Three Procedure of Execution

## Chapter XX General Provisions

Article 207 Legally effective judgments or written orders in civil cases, as well as the parts of judgments or written orders that relate to property in criminal cases, shall be executed by the people's court of first instance.

Other legal documents which are to be executed by a people's court as prescribed by the law shall be executed by the people's court of the place where the person subjected to execution has his domicile or where the property subject to execution is located.

Article 208 If, in the course of execution, an outsider raises an objection with respect to the object subjected to execution, the execution officer shall examine the objection in accordance with the procedure prescribed by the law. If the reasons for the objection are untenable, the objection shall be rejected; if otherwise, execution shall be suspended with the approval of the president of the court. If definite error is found in the judgment or the written order, it shall be dealt with in accordance with the procedure for trial supervision.

Article 209 Execution work shall be carried out by the execution officer.

When carrying out a compulsory execution measure, the execution officer shall produce his credentials. After the execution is completed, the execution officer shall make a record of the particulars of the execution, and have it signed or sealed by the persons concerned on the scene.

The basic people's court and the intermediate people's court may, when necessary, establish execution organs, whose functions shall be defined by the Supreme People's Court.

Article 210 If a person or property subjected to execution is in another locality, the people's court in that locality may be entrusted with the carrying out of the execution. The entrusted people's court shall begin the execution within 15 days after receiving a letter of entrustment and shall not refuse to do so. After the execution has been completed, the entrusted people's court shall promptly inform the entrusting people's court, by letter, of the result of the execution. If the execution has not been completed within 30 days, the entrusted people's court shall also inform the entrusting people's court, by letter, of the particulars of the execution.

If the entrusted people's court does not carry out the execution within 15 days after receiving the letter of entrustment, the entrusting people's court may request the people's court at a higher level over the entrusted people's court to instruct the entrusted people's court to carry out the execution.

Article 211 If in the course of execution the two parties become reconciled and reach a settlement agreement on their own initiative, the execution officer shall make a record of the contents of the agreement, and both parties shall affix their signatures or seals to the record.

If either party fails to fulfil the settlement agreement, the people's court may, at the request of the other party, resume the execution of the legal document which was originally effective.

Article 212 In the course of execution, if the person subjected to execution provides a guaranty, the people's court may, with the consent of the person who has applied for execution, decide on the suspension of the execution and the time limit for such suspension. If the person subjected to execution still fails to perform his obligations after the time limit, the people's court shall have the power to execute the property he provided as security or the property of the guarantor.

Article 213 If the citizen subjected to execution dies, his debts shall be paid off from the deceased estate; if a legal person or any other organization subjected to execution dissolves, the party that succeeds to its rights and obligations shall fulfil the obligations.

Article 214 After the completion of execution, if definite error is found in the executed judgment, written order or other legal documents resulting in the annulment of such judgment, order or legal documents by the people's court, the said court shall, with respect to the property which has been executed, make a written order that persons who have obtained the property shall return it. In the event of refusal to return such property, compulsory execution shall be carried out.

Article 215 The provisions of this Part shall be applicable to the execution of the conciliation statement as drawn up by the people's court.

## Chapter XXI Application for Execution and Referral

Article 216 The parties concerned must comply with legally effective judgments or written orders in civil cases. If a party refuses to do so, the other party may apply to the people's court for execution, or the judge may refer the matter to the execution officer for enforcement.

The parties concerned must comply with the conciliation statement and other legal documents that are to be executed by the people's court. If a party refuses to do so, the other party may apply to the people's court for enforcement.

Article 217 If a party fails to comply with an award of an arbitral organ established according to the law, the other party may apply for execution to the people's court which has jurisdiction over the case. The people's court applied to shall enforce the award.

If the party against whom the application is made furnishes proof that the arbitral award involves any of the following circumstances, the people's court shall, after examination and verification by a collegial panel, make a written order not to allow the enforcement:

- (1) the parties have had no arbitration clause in their contract, nor have subsequently reached a written agreement on arbitration;
- (2) the matters dealt with by the award fall outside the scope of the arbitration agreement or are matters which the arbitral organ has no power to arbitrate;
- (3) the composition of the arbitration tribunal or the procedure for arbitration contradicts the procedure prescribed by the law.
- (4) the main evidence for ascertaining the facts is insufficient;
- (5) there is definite error in the application of the law; or
- (6) the arbitrators have committed embezzlement, accepted bribes or done malpractice for personal benefits or perverted the law in the arbitration of the case;

If the people's court determines that the execution of the arbitral award is against the social and public interest, it shall make an order not to allow the execution.

The above-mentioned written order shall be served on both parties and the arbitral organ.

If the execution of an arbitral award is disallowed by a written order of the people's court, the parties may, in accordance with a written agreement on arbitration reached between them, apply for arbitration again; they may also bring an action in a people's court.

Article 218 If a party fails to comply with a document evidencing the creditor's rights made enforceable according to the law by a notary office, the other party may apply to the people's court which has jurisdiction over the case for execution. The people's court applied to shall enforce such document.

If the people's court finds definite error in the document of creditor's rights, it shall make an order not to allow the execution and serve the order on both parties concerned as well as the notary office.

Article 219 The time limit for the submission of an application for execution shall be one year, if both or one of the parties are citizens; it shall be six months if both parties are legal persons or other organizations.

The above-mentioned time limit shall be calculated from the last day of the period of performance specified by the legal document. If the legal document specifies performance in stages, the time limit shall be calculated from the last day of the period specified for each stage of performance.

Article 220 The execution officer shall, after receiving the application for execution or the writ of referral directing execution, send an execution notice to the person subjected to execution,



instructing him to comply within the specified time. If the person fails to comply accordingly, compulsory execution shall be carried out.

## Chapter XXII Execution Measures

Article 221 If the person subjected to execution fails to fulfil according to the execution notice the obligations specified in the legal document, the people's court shall be empowered to make inquiries with banks, credit cooperatives or other units that deal with savings deposit into the deposit accounts of the person subjected to execution, and shall be empowered to freeze or transfer his deposits; however, the inquiries, freezing or transfer of the deposits shall not exceed the scope of the obligations to be fulfilled by the person subjected to execution.

The people's court shall, in deciding to freeze or transfer a deposit, make a written order and issue a notice for assistance in execution. Banks, credit cooperatives or other units that deal with savings deposit must comply with it.

Article 222 If the person subjected to execution fails to fulfil according to the execution notice the obligations specified in the legal document, the people's court shall be empowered to withhold or withdraw part of the income of the person subjected to execution, for the fulfillment of his obligations. However, it shall leave out the necessary living expenses for the person subjected to execution and his dependant family members.

The people's court shall, when withholding or withdrawing the income, make a written order and issue a notice for assistance in execution. The unit in which the person subjected to execution works, banks, credit cooperatives or other units that deal with savings deposit must comply with the notice.

Article 223 If the person subjected to execution fails to fulfil according to the execution notice the obligations specified in the legal document, the people's court shall be empowered to seal up , distraint, freeze, sell by public auction, or sell off part of the property of the person subjected to execution for the fulfilment of his obligations. However, it shall leave out the necessities of life for the person subjected to execution and his dependant family members.

The people's court shall make an order for the adoption of the measures specified in the preceding paragraph.

Article 224 When the people's court seals up or distrains a property, it shall, if the person subjected to execution is a citizen, notify him or an adult member of his family to appear on the scene; if the party subjected to execution is a legal person or any other organization, it shall notify its legal representatives or its principal heads to be present. Their refusal to appear on the scene shall not hinder the execution. If the person subjected to execution is a citizen, his unit or the grass-roots organization of the place where his property is located shall send a representative to attend the execution.

An inventory of the sealed-up or distrained property must be made by the execution officer and, after the inventory has been signed or sealed by the persons on the scene, a copy of it shall be given to the person subjected to execution. If the person subjected to execution is a citizen, another copy may be given to an adult member of his family.

Article 225 The execution officer may commit the sealed-up property to the person subjected to execution for safekeeping, and the person shall be held responsible for any losses incurred due to his fault.

Article 226 After a property has been sealed up or distrained, the execution officer shall instruct the person subjected to execution to fulfil, within the prescribed period, the obligations specified in the legal document. If the person has not fulfilled his obligations upon expiration of the period, the people's court may, in accordance with the relevant legal provisions, entrust the relevant units with selling by public auction or selling off the sealed-up or distrained property. Articles which are prohibited from free trading by the State shall be delivered to and purchased by the relevant units at the price fixed by the State.

Article 227 If the person subjected to execution fails to fulfil his obligations specified in the legal document and conceals his property, the people's court shall be empowered to issue a search warrant and search him and his domicile or the place where the property was concealed.

In adopting the measure mentioned in the preceding paragraph, the president of the people's court shall sign and issue the search warrant.

Article 228 With respect to the property or negotiable instruments specified for delivery in the legal document, the execution officer shall summon both parties concerned and deliver them in their presence or the execution officer may forward them to the recipient, who shall sign and give a receipt.

Any unit concerned that has in possession the property or negotiable instruments shall turn them over to the recipient in accordance with the notice of the people's court for assistance in execution, and the recipient shall sign and give a receipt.

If any citizen concerned has in possession the property or negotiable instruments, the people's court shall notify him to hand them over. If he refuses to do so, compulsory execution shall be carried out.

Article 229 Compulsory eviction from a building or a plot of land shall require a public notice signed and issued by the president of a people's court, instructing the person subjected to execution to comply within a specified period of time. If the person subjected to execution fails to do so upon the expiration of the period, compulsory execution shall be carried out by the execution officer.

When compulsory execution is being carried out, if the person subjected to execution is a citizen, the person or an adult member of his family shall be notified to be present; if the party subjected to execution is a legal person or any other organization, its legal representatives or principal heads shall be notified to be present; their refusal to be present shall not hinder the execution. If the

person subjected to execution is a citizen, his work unit or the grass-roots organization in the locality of the building or the plot of land shall send a representative for attendance. The execution officer shall make a record of the particulars of the compulsory execution, with the signatures or seals of the persons on the scene affixed to it.

The people's court shall assign personnel to transport the property removed in a compulsory eviction from a building to a designated location and turn it over to the person subjected to execution or, if the person is a citizen, to an adult member of his family; if any loss is incurred due to such person's refusal to accept the property, the loss shall be borne by the person subjected to execution.

Article 230 In the course of execution, if certain formalities for the transfer of certificates of property right need to be gone through, the people's court may issue a notice for assistance in execution to the relevant units, and they must comply with it.

Article 231 If the person subjected to execution fails to perform acts specified in a judgment or written order or any other legal document according to the execution notice, the people's court may carry out compulsory execution or entrust the task to a relevant unit or other persons, and the person subjected to execution shall bear the expenses thus incurred.

Article 232 If the person subjected to execution fails to fulfil his obligations with respect to pecuniary payment within the period specified by a judgment or written order or any other legal document, he shall pay double interest on the debt for the belated payment. If the person subjected to execution fails to fulfil his other obligations within the period specified in the judgment or written order or any other legal document, he shall pay a charge for the dilatory fulfillment.

Article 233 After the adoption of the execution measures stipulated in Articles 221, 222 and 223 of this Law, if the person subjected to execution is still unable to repay the debts, he shall continue to fulfil his obligations. If the creditor finds that the person subjected to execution has any other property, he may at any time apply to the people's court for execution.

## Chapter XXIII Suspension and Termination of Execution

Article 234 The people's court shall make a written order to suspend execution under any of the following circumstances:

- (1) the applicant indicates that the execution may be postponed;
- (2) an outsider raises an obviously reasonable objection to the object of the execution;
- (3) a citizen as one of the parties dies and it is necessary to wait for the successor to inherit the rights of the deceased or to succeed to his obligations;
- (4) a legal person or any other organization as one of the parties dissolves, and the party succeeding to its rights and obligations has not been determined; or

(5) other circumstances occur under which the people's court deems the suspension of execution necessary.

Execution shall be resumed when the circumstances warranting the suspension of execution have disappeared.

Article 235 The people's court shall make a written order to terminate execution under any of following circumstances:

- (1) the applicant has withdrawn his application;
- (2) the legal document on which the execution is based has been revoked;
- (3) the citizen subjected to execution dies and there is no estate that may be subjected to execution, nor anyone to succeed to his obligations;
- (4) the person entitled to claim alimony or support for elders or children dies;
- (5) the citizen subjected to execution is too badly off to repay his debts, has no source of income and has lost his ability to work as well; or
- (6) other circumstances occur under which the people's court deems the termination of execution necessary.

Article 236 A written order to suspend or terminate execution shall become effective immediately after being served on the parties concerned.

#### Part Four Special Provisions for Civil Procedure of Cases Involving Foreign Element

#### Chapter XXIV General Principles

Article 237 The provisions of this Part shall be applicable to civil proceedings within the territory of the People's Republic of China in regard to cases involving foreign element. Where it is not covered by the provisions of this Part, other relevant provisions of this Law shall apply.

Article 238 If an international treaty concluded or acceded to by the People's Republic of China contains provisions that differ from provisions of this Law, the provisions of the international treaty shall apply, except those on which China has made reservations.

Article 239 Civil actions brought against a foreign national, a foreign organization or an international organization that enjoys diplomatic privileges and immunities shall be dealt with in accordance with the relevant law of the People's Republic of China and the provisions of the international treaties concluded or acceded to by the People's Republic of China.

Article 240 The people's court shall conduct trials of civil cases involving foreign element in the spoken and written language commonly used in the People's Republic of China. Translation may be provided at the request of the parties concerned, and the expenses shall be borne by them.

Article 241 When foreign nationals, stateless persons or foreign enterprises and organizations need lawyers as agents ad litem to bring an action or enter appearance on their behalf in the people's court, they must appoint lawyers of the People's Republic of China.

Article 242 Any power of attorney mailed or forwarded by other means from outside the territory of the People's Republic of China by a foreign national, stateless person or a foreign enterprise and organization that has no domicile in the People's Republic of China for the appointment of a lawyer or any other person of the People's Republic of China as an agent ad litem must be notarized by a notarial office in the country of domicile and authenticated by the Chinese embassy or consulate accredited to that country or, for the purpose of verification, must go through the formalities stipulated in the relevant bilateral treaties between China and that country before it becomes effective.

## Chapter XXV Jurisdiction

Article 243 In the case of an action concerning a contract dispute or other disputes over property rights and interests, brought against a defendant who has no domicile within the territory of the People's Republic of China, if the contract is signed or performed within the territory of the People's Republic of China, or if the object of the action is located within the territory of the People's Republic of China, or if the defendant has distrainable property within the territory of the People's Republic of China, or if the defendant has its representative office within the territory of the People's Republic of China, the people's court of the place where the contract is signed or performed, or where the object of the action is, or where the defendant's distrainable property is located, or where the torts are done, or where the defendant's representative office is located, shall have jurisdiction.

Article 244 Parties to a dispute over a contract concluded with foreign element or over property rights and interests involving foreign element may, through written agreement, choose the court of the place which has practical connections with the dispute to exercise jurisdiction. If a people's court of the People's Republic of China is chosen to exercise jurisdiction, the provisions of this Law on jurisdiction by forum level and on exclusive jurisdiction shall not be violated.

Article 245 If in a civil action in respect of a case involving foreign element, the defendant raises no objection to the jurisdiction of a people's court and responds to the action by making his defence, he shall be deemed to have accepted that this people's court has jurisdiction over the case.

Article 246 Actions brought on disputes arising from the performance of contracts for Chinese-foreign equity joint ventures, or Chinese-foreign contractual joint ventures, or Chinese-foreign

cooperative exploration and development of the natural resources in the People's Republic of China shall fall under the jurisdiction of the people's courts of the People's Republic of China.

## Chapter XXVI Service and Time Periods

Article 247 A people's court may serve litigation documents on a party who has no domicile within the territory of the People's Republic of China in the following ways:

- (1) in the way specified in the international treaties concluded or acceded to by both the People's Republic of China and the country where the person on whom service is to be made resides;
- (2) by making the service through diplomatic channels;
- (3) with respect to the person on whom the service is to be made and who is of the nationality of the People's Republic of China, service may be entrusted to the embassy or consulate of the People's Republic of China accredited to the country where the person resides;
- (4) by making the service on the agent ad litem who is authorized to receive the documents served;
- (5) by serving the documents on the representative office established in the People's Republic of China by the person on whom the service is to be made or on his branch office or business agents there who have the right to receive the documents;
- (6) by making service by mail if the law of the country where the person on whom the service is to be made resides so permits; in the event that the receipt of delivery is not returned six months after the date on which the documents were mailed, and that circumstances justify the assumption that service has been made, the service shall be deemed completed upon the expiration of the said time period; and
- (7) by making service by public notice, if none of the above-mentioned methods can be employed. The service shall be deemed completed six months after the date on which the public notice was issued.

Article 248 If a defendant has no domicile within the territory of the People's Republic of China, the people's court shall serve a copy of the statement of complaint on the defendant and notify him to submit his defence within 30 days after he receives the copy of the statement of complaint. Extension of the period requested by the defendant shall be at the discretion of the people's court.

Article 249 If a party who has no domicile within the territory of the People's Republic of China is not satisfied with a judgment or written order made by a people's court of first instance, he shall have the right to file an appeal within 30 days from the date the written judgment or order is served. The appellee shall submit his defence within 30 days after receipt of a copy of the appeal petition. If a party who is unable to file an appeal or submit a defence within the period prescribed by the law requests an extension of the period, the people's court shall decide whether to grant it.

Article 250 The period for the trials of civil cases involving foreign element by the people's court shall not be restricted by the provisions of Articles 135 and 159 of this Law.

## Chapter XXVII Property Preservation

Article 251 The parties to an action may, in accordance with the provisions of Article 92 of this Law, apply to the people's court for property preservation.

Interested parties may, in accordance with the provisions of Article 93 of this Law, apply to the people's court for property preservation before an action is brought.

Article 252 After a people's court makes an order granting property preservation before litigation, the applicant shall bring an action within 30 days. If he fails to bring the action within the period, the people's court shall cancel the property preservation.

Article 253 After the people's court makes an order granting property preservation, if the party against whom the application is made provides a guaranty, the people's court shall cancel the property preservation.

Article 254 If the application is wrongfully made, the applicant shall compensate the party against whom the application is made for losses incurred from the property preservation.

Article 255 If the property to be preserved by a people's court needs supervision, the court shall notify the unit concerned to be responsible for the supervision, and the party against whom the application is made shall bear the expenses.

Article 256 The order to cancel the preservation issued by a people's court shall be carried out by an execution officer.

## Chapter XXVIII Arbitration

Article 257 In the case of a dispute arising from the foreign economic, trade, transport or maritime activities of China, if the parties have had an arbitration clause in the contract concerned or have subsequently reached a written arbitration agreement stipulating the submission of the dispute for arbitration to an arbitral organ in the People's Republic of China handling cases involving foreign element, or to any other arbitral body, they may not bring an action in a people's court.

If the parties have not had an arbitration clause in the contract concerned or have not subsequently reached a written arbitration agreement, they may bring an action in a people's court.

Article 258 If a party has applied for property preservation measures, the arbitral organ of the People's Republic of China handling cases involving foreign element shall refer the party's

application for a decision to the intermediate people's court of the place where the party against whom the application is made has his domicile or where his property is located.

Article 259 In a case in which an award has been made by an arbitral organ of the People's Republic of China handling cases involving foreign element, the parties may not bring an action in a people's court. If one party fails to comply with the arbitral award, the other party may apply for its enforcement to the intermediate people's court of the place where the party against whom the application for enforcement is made has his domicile or where his property is located.

Article 260 A people's court shall, after examination and verification by a collegial panel of the court, make a written order not to allow the enforcement of the award rendered by an arbitral organ of the People's Republic of China handling cases involving foreign element, if the party against whom the application for enforcement is made furnishes proof that:

- (1) the parties have not had an arbitration clause in the contract or have not subsequently reached a written arbitration agreement;
- (2) the party against whom the application for enforcement is made was not given notice for the appointment of an arbitrator or for the inception of the arbitration proceedings or was unable to present his case due to causes for which he is not responsible;
- (3) the composition of the arbitration tribunal or the procedure for arbitration was not in conformity with the rules of arbitration; or
- (4) the matters dealt with by the award fall outside the scope of the arbitration agreement or which the arbitral organ was not empowered to arbitrate.

If the people's court determines that the enforcement of the award goes against the social and public interest of the country, the people's court shall make a written order not to allow the enforcement of the arbitral award.

Article 261 If the enforcement of an arbitral award is disallowed by a written order of a people's court, the parties may, in accordance with a written arbitration agreement reached between them, apply for arbitration again; they may also bring an action in a people's court.

## Chapter XXIX Judicial Assistance

Article 262 In accordance with the international treaties concluded or acceded to by the People's Republic of China or with the principle of reciprocity, the people's courts of China and foreign courts may make mutual requests for assistance in the service of legal documents, in investigation and collection of evidence or in other litigation actions.

The people's court shall not render the assistance requested by a foreign court, if it impairs the sovereignty, security or social and public interest of the People's Republic of China.



Article 263 The request for the providing of judicial assistance shall be effected through channels provided in the international treaties concluded or acceded to by the People's Republic of China; in the absence of such treaties, they shall be effected through diplomatic channels.

A foreign embassy or consulate accredited to the People's Republic of China may serve documents on its citizens and make investigations and collect evidence among them, provided that the laws of the People's Republic of China are not violated and no compulsory measures are taken.

Except for the conditions provided in the preceding paragraph, no foreign organization or individual may, without the consent of the competent authorities of the People's Republic of China, serve documents or make investigations and collect evidence within the territory of the People's Republic of China.

Article 264 The letter of request for judicial assistance and its annexes sent by a foreign court to a people's court shall be appended with a Chinese translation or a text in any other language or languages specified in the relevant international treaties.

The letter of request and its annexes sent to a foreign court by a people's court for judicial assistance shall be appended with a translation in the language of that country or a text in any other language or languages specified in the relevant international treaties.

Article 265 The judicial assistance provided by the people's courts shall be rendered in accordance with the procedure prescribed by the laws of the People's Republic of China. If a special form of judicial assistance is requested by a foreign court, it may also be rendered, provided that the special form requested does not contradict the laws of the People's Republic of China.

Article 266 If a party applies for enforcement of a legally effective judgment or written order made by a people's court, and the opposite party or his property is not within the territory of the People's Republic of China, the applicant may directly apply for recognition and enforcement to the foreign court which has jurisdiction. The people's court may also, in accordance with the relevant provisions of the international treaties concluded or acceded to by China, or with the principle of reciprocity, request recognition and enforcement by the foreign court.

If a party applies for enforcement of a legally effective arbitral award made by an arbitral organ in the People's Republic of China handling cases involving foreign element and the opposite party or his property is not within the territory of the People's Republic of China, he may directly apply for recognition and enforcement of the award to the foreign court which has jurisdiction.

Article 267 If a legally effective judgment or written order made by a foreign court requires recognition and enforcement by a people's court of the People's Republic of China, the party concerned may directly apply for recognition and enforcement to the intermediate people's court of the People's Republic of China which has jurisdiction. The foreign court may also, in accordance with the provisions of the international treaties concluded or acceded to by that foreign country and the People's Republic of China or with the principle of reciprocity, request recognition and enforcement by a people's court.

Article 268 In the case of an application or request for recognition and enforcement of a legally effective judgment or written order of a foreign court, the people's court shall, after examining it in accordance with the international treaties concluded or acceded to by the People's Republic of China or with the principle of reciprocity and arriving at the conclusion that it does not contradict the basic principles of the law of the People's Republic of China nor violates State sovereignty, security and social and public interest of the country, recognize the validity of the judgment or written order, and, if required, issue a writ of execution to enforce it in accordance with the relevant provisions of this Law; if the application or request contradicts the basic principles of the law of the People's Republic of China or violates State sovereignty, security and social and public interest of the country, the people's court shall not recognize and enforce it.

Article 269 If an award made by a foreign arbitral organ requires the recognition and enforcement by a people's court of the People's Republic of China, the party concerned shall directly apply to the intermediate people's court of the place where the party subjected to enforcement has his domicile or where his property is located. The people's court shall deal with the matter in accordance with the international treaties concluded or acceded to by the People's Republic of China or with the principle of reciprocity.

Article 270 This Law shall go into effect as of the date of promulgation, and the Civil Procedure Law of the People's Republic of China (for Trial Implementation) shall be abrogated simultaneously.

## **Criminal Procedure Law of the People's Republic of China**

Adopted at the Second Session of the Fifth National People's Congress on July 1, 1979, promulgated by Order No.6 of the Chairman of the Standing Committee of the National People's Congress on July 7, 1979 and effective as of January 1, 1980; amended in accordance with the Decision on Revising the Criminal Procedure Law of the People's Republic of China adopted at the Fourth Session of the Eighth National People's Congress on March 17, 1996

### Contents

#### Part One General Provisions

##### Chapter I Aim and Basic Principles

##### Chapter II Jurisdiction

##### Chapter III Withdrawal

##### Chapter IV Defence and Representation

##### Chapter V Evidence

##### Chapter VI Compulsory Measures

##### Chapter VII Incidental Civil Actions

##### Chapter VIII Time Periods and Service

##### Chapter IX Other Provisions

#### Part Two Filing a Case, Investigation, and Initiation of Public Prosecution

##### Chapter I Filing a Case

##### Chapter II Investigation

###### Section 1 General Provisions

###### Section 2 Interrogation of the Criminal Suspect

###### Section 3 Questioning of the Witnesses

###### Section 4 Inquest and Examination

###### Section 5 Search

###### Section 6 Seizure of Material Evidence and Documentary Evidence

###### Section 7 Expert Evaluation

Section 8 Wanted Orders

Section 9 Conclusion of Investigation

Section 10 Investigation of Cases Directly Accepted by the People's Procuratorates

Chapter III Initiation of Public Prosecution

Part Three Trial

Chapter I Trial Organizations

Chapter II Procedure of First Instance

Section 1 Cases of Public Prosecution

Section 2 Cases of Private Prosecution

Section 3 Summary Procedure

Chapter III Procedure of Second Instance

Chapter IV Procedure for Review of Death Sentences

Chapter V Procedure for Trial Supervision

Part Four Execution

Supplementary Provisions

Part One General Provisions

Chapter I Aim and Basic Principles

Article 1 This Law is enacted in accordance with the Constitution and for the purpose of ensuring correct enforcement of the Criminal Law, punishing crimes, protecting the people, safeguarding State and public security and maintaining socialist public order.

Article 2 The aim of the Criminal Procedure Law of the People's Republic of China is: to ensure accurate and timely ascertainment of facts about crimes, correct application of law, punishment of criminals and protection of the innocent against being investigated for criminal responsibility; to enhance the citizens' awareness of the need to abide by law and to fight vigorously against criminal acts in order to safeguard the socialist legal system, to protect the citizens' personal rights; their property rights, democratic rights and other rights; and to guarantee smooth progress of the cause of socialist development.

Article 3 The public security organs shall be responsible for investigation, detention, execution of arrests and preliminary inquiry in criminal cases. The People's Procuratorates shall be responsible for procuratorial work, authorizing approval of arrests, conducting investigation and initiating public prosecution of cases directly accepted by the procuratorial organs. The People's Courts shall be responsible for adjudication. Except as otherwise provided by law, no other organs, organizations or individuals shall have the authority to exercise such powers.

In conducting criminal proceedings, the People's Courts, the People's Procuratorates and the public security organs must strictly observe this Law and any relevant stipulations of other laws.

Article 4 State security organs shall, in accordance with law, handle cases of crimes that endanger State security, performing the same functions and powers as the public security organs.

Article 5 The People's Courts shall exercise judicial power independently in accordance with law and the People's Procuratorates shall exercise procuratorial power independently in accordance with law, and they shall be free from interference by any administrative organ, public organization or individual.

Article 6 In conducting criminal proceedings, the People's Courts, the People's Procuratorates and the public security organs must rely on the masses, base themselves on facts and take law as the criterion. The law applies equally to all citizens and no privilege whatsoever is permissible before law.

Article 7 In conducting criminal proceedings, the People's Courts, the People's Procuratorates and the public security organs shall divide responsibilities, coordinate their efforts and check each other to ensure the correct and effective enforcement of law.

Article 8 The People's Procuratorates shall, in accordance with law, exercise legal supervision over criminal proceedings.

Article 9 Citizens of all nationalities shall have the right to use their native spoken and written languages in court proceedings. The People's Courts, the People's Procuratorates and the public security organs shall provide translations for any party to the court proceedings who is not familiar with the spoken or written language commonly used in the locality.

Where people of a minority nationality live in a concentrated community or where a number of nationalities live together in one area, court hearings shall be conducted in the spoken language commonly used in the locality, and judgments, notices and other documents shall be issued in the written language commonly used in the locality.

Article 10 In trying cases, the People's Courts shall apply the system whereby the second instance is final.

Article 11 Cases in the People's Courts shall be heard in public, unless otherwise provided by this Law. A defendant shall have the right to defence, and the People's Courts shall have the duty to guarantee his defence.

Article 12 No person shall be found guilty without being judged as such by a People's Court according to law.

Article 13 In trying cases, the People's Courts shall apply the system of people's assessors taking part in trials in accordance with this Law.

Article 14 The People's Courts, the People's Procuratorates and the public security organs shall safeguard the procedural rights to which participants in proceedings are entitled according to law.

In cases where a minor under the age of 18 commits a crime, the criminal suspect and the legal representative of the defendant may be notified to be present at the time of interrogation and trial.

Participants in proceedings shall have the right to file charges against judges, procurators and investigators whose acts infringe on their citizen's procedural rights or subject their persons to indignities.

Article 15 In any of the following circumstances, no criminal responsibility shall be investigated; if investigation has already been undertaken, the case shall be dismissed, or prosecution shall not be initiated, or the handling shall be terminated, or innocence shall be declared:

- (1) if an act is obviously minor, causing no serious harm, and is therefore not deemed a crime;
- (2) if the limitation period for criminal prosecution has expired;
- (3) if an exemption of criminal punishment has been granted in a special amnesty decree;
- (4) if the crime is to be handled only upon complaint according to the Criminal Law, but there has been no complaint or the complaint has been withdrawn;
- (5) if the criminal suspect or defendant is deceased; or
- (6) if other laws provide an exemption from investigation of criminal responsibility.

Article 16 Provisions of this Law shall apply to foreigners who commit crimes for which criminal responsibility should be investigated.

If foreigners with diplomatic privileges and immunities commit crimes for which criminal responsibility should be investigated, those cases shall be resolved through diplomatic channels.

Article 17 In accordance with the international treaties which the People's Republic of China has concluded or acceded to or on the principle of reciprocity, the judicial organs of China and that of other countries may request judicial assistance from each other in criminal affairs.

## Chapter II Jurisdiction

Article 18 Investigation in criminal cases shall be conducted by the public security organs, except as otherwise provided by law.

Crimes of embezzlement and bribery, crimes of dereliction of duty committed by State functionaries, and crimes involving violations of a citizen's personal rights such as illegal detention, extortion of confessions by torture, retaliation, frame-up and illegal search and crimes involving infringement of a citizen's democratic rights -- committed by State functionaries by taking advantage of their functions and powers -- shall be placed on file for investigation by the People's Procuratorates. If cases involving other grave crimes committed by State functionaries by taking advantage of their functions and powers need be handled directly by the People's Procuratorates, they may be placed on file for investigation by the People's Procuratorates upon decision by the People's Procuratorates at or above the provincial level.

Cases of private prosecution shall be handled directly by the People's Courts.

Article 19 The Primary People's Courts shall have jurisdiction as courts of first instance over ordinary criminal cases; however, those cases which fall under the jurisdiction of the People's Courts at higher levels as stipulated by this Law shall be exceptions.

Article 20 The Intermediate People's Courts shall have jurisdiction as courts of first instance over the following criminal cases:

- (1) counterrevolutionary cases and cases endangering State security;
- (2) ordinary criminal cases punishable by life imprisonment or the death penalty; and
- (3) criminal cases in which the offenders are foreigners.

Article 21 The Higher People's Courts shall have jurisdiction as courts of first instance over major criminal cases that pertain to an entire province (or autonomous region, or municipality directly under the Central Government).

Article 22 The Supreme People's Court shall have jurisdiction as the court of first instance over major criminal cases that pertain to the whole nation.

Article 23 When necessary, People's Courts at higher levels may try criminal cases over which People's Courts at lower levels have jurisdiction as courts of first instance; If a People's Court at a lower level considers the circumstances of a criminal case in the first instance to be major or complex and to necessitate a trial by a People's Court at a higher level, it may request that the case be transferred to the People's Court at the next higher level for trial.

Article 24 A criminal case shall be under the jurisdiction of the People's Court in the place where the crime was committed. If it is more appropriate for the case to be tried by the People's Court in the place where the defendant resides, then that court may have jurisdiction over the case.

Article 25 When two or more People's Courts at the same level have jurisdiction over a case, it shall be tried by the People's Court that first accepted it. When necessary the case may be transferred for trial to the People's Court in the principal place where the crime was committed.

Article 26 A People's Court at a higher level may instruct a People's Court at a lower level to try a case over which jurisdiction is unclear and may also instruct a People's Court at a lower level to transfer the case to another People's Court for trial.

Article 27 The jurisdiction over cases in special People's Courts shall be stipulated separately.

### Chapter III Withdrawal

Article 28 In any of the following situations, a member of the judicial, procuratorial or investigatory personnel shall voluntarily withdraw, and the parties to the case and their legal representatives shall have the right to demand his withdrawal:

- (1) if he is a party or a near relative of a party to the case;
- (2) if he or a near relative of his has an interest in the case;
- (3) if he has served as a witness, expert witness, defender or agent ad litem in the current case ; or
- (4) if he has any other relations with a party to the case that could affect the impartial handling of the case.

Article 29 Judges, procurators or investigators shall not accept invitations to dinner or presents from the parties to a case or the persons entrusted by the parties and shall not in violation of regulations meet with the parties to a case or the persons entrusted by the parties.

Any judge, procurator or investigator who violates the provisions in the preceding paragraph shall be investigated for legal responsibility. The parties to the case and their legal representatives shall have the right to request him to withdraw.

Article 30 The withdrawal of a judge, procurator and investigator shall be determined respectively by the president of the court, the chief procurator, and the head of a public security organ; the withdrawal of the president of the court shall be determined by the court's judicial committee; and the withdrawal of the chief procurator or the head of a public security organ shall be determined by the procuratorial committee of the People's Procuratorate at the corresponding level.

An investigator may not suspend investigation of a case before a decision is made on his withdrawal.

If a decision has been made to reject his application for withdrawal, the party or his legal representative may apply for reconsideration once.

Article 31 The provisions of Articles 28, 29 and 30 of this Law shall also apply to court clerks, interpreters and expert witnesses.

### Chapter IV Defence and Representation



Article 32 In addition to exercising the right to defend himself, a criminal suspect or a defendant may entrust one or two persons as his defenders. The following persons may be entrusted as defenders:

- (1) lawyers;
- (2) persons recommended by a public organization or the unit to which the criminal suspect or the defendant belongs; and
- (3) guardians or relatives and friends of the criminal suspect or the defendant.

Persons who are under criminal punishment or whose personal freedom is deprived of or restricted according to law shall not serve as defenders.

Article 33 A criminal suspect in a case of public prosecution shall have the right to entrust persons as his defenders from the date on which the case is transferred for examination before prosecution. A defendant in a case of private prosecution shall have the right to entrust persons as his defenders at any time.

A People's Procuratorate shall, within three days from the date of receiving the file record of a case transferred for examination before prosecution, inform the criminal suspect that he has the right to entrust persons as his defenders. A People's Court shall, within three days from the date of accepting a case of private prosecution, inform the defendant that he has the right to entrust persons as his defenders.

Article 34 If a case is to be brought in court by a public prosecutor and the defendant involved has not entrusted anyone to be his defender due to financial difficulties or other reasons, the People's Court may designate a lawyer that is obligated to provide legal aid to serve as a defender.

If the defendant is blind, deaf or mute, or if he is a minor, and thus has not entrusted anyone to be his defender, the People's Court shall designate a lawyer that is obligated to provide legal aid to serve as a defender.

If there is the possibility that the defendant may be sentenced to death and yet he has not entrusted anyone to be his defender, the People's Court shall designate a lawyer that is obligated to provide legal aid to serve as a defender.

Article 35 The responsibility of a defender shall be to present, according to the facts and law, materials and opinions proving the innocence of the criminal suspect or defendant, the pettiness of his crime and the need for a mitigated punishment or exemption from criminal responsibility, thus safeguarding the lawful rights and interests of the criminal suspect or the defendant.

Article 36 Defence lawyers may, from the date on which the People's Procuratorate begins to examine a case for prosecution, consult, extract and duplicate the judicial documents pertaining to the current case and the technical verification material, and may meet and correspond with the criminal suspect in custody. Other defenders, with permission of the People's Procuratorate, may also consult, extract and duplicate the above-mentioned material, meet and correspond with the criminal suspect in custody.

Defence lawyers may, from the date on which the People's Court accepts a case, consult, extract and duplicate the material of the facts of the crime accused in the current case, and may meet and correspond with the defendant in custody. Other defenders, with permission of the People's Court, may also consult, extract and duplicate the above-mentioned material, and may meet and correspond with the defendant in custody.

Article 37 Defence lawyers may, with the consent of the witnesses or other units and individuals concerned, collect information pertaining to the current case from them and they may also apply to the People's Procuratorate or the People's Court for the collection and obtaining of evidence, or request the People's Court to inform the witnesses to appear in court and give testimony.

With permission of the People's Procuratorate or the People's Court and with the consent of the victim, his near relatives or the witnesses provided by the victim, defence lawyers may collect information pertaining to the current case from them.

Article 38 Defense lawyers and other defenders shall not help the criminal suspects or defendants to conceal, destroy or falsify evidence or to tally their confessions, and shall not intimidate or induce the witnesses to modify their testimony or give false testimony or conduct other acts to interfere with the proceedings of the judicial organs.

Whoever violates the provisions of the preceding paragraph shall be investigated for legal responsibility according to law.

Article 39 During a trial, the defendant may refuse to have his defender continue to defend him and may entrust his defence to another defender.

Article 40 A victim in a case of public prosecution, his legal representatives or near relatives, and a party in an incidental civil action and his legal representatives shall, from the date on which the case is transferred for examination before prosecution, have the right to entrust agents ad litem. A private prosecutor in a case of private prosecution and his legal representatives, and a party in an incidental civil action and his legal representatives shall have the right to entrust agents ad litem at any time.

The People's Procuratorate shall, within three days from the date of receiving the file record of a case transferred for examination before prosecution, notify the victim and his legal representatives or near relatives and the party in an incidental civil action and his legal representatives that they have the right to entrust agents ad litem. The People's Court shall, within three days from the date of accepting a case of private prosecution, notify the private prosecutor and his legal representatives and the party in an incidental civil action and his legal representatives that they have the right to entrust agents ad litem.

Article 41 With regard to entrusting of agents ad litem, the provisions of Article 32 of this Law shall be applied *mutatis mutandis*.

## Chapter V Evidence

Article 42 All facts that prove the true circumstances of a case shall be evidence.

There shall be the following seven categories of evidence:

- (1) material evidence and documentary evidence;
- (2) testimony of witnesses;
- (3) statements of victims;
- (4) statements and exculpations of criminal suspects or defendants;
- (5) expert conclusions;
- (6) records of inquests and examination; and
- (7) audio-visual materials.

Any of the above evidence must be verified before it can be used as the basis for deciding cases.

Article 43 Judges, procurators and investigators must, in accordance with the legally prescribed process, collect various kinds of evidence that can prove the criminal suspect's or defendant's guilt or innocence and the gravity of his crime. It shall be strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means. Conditions must be guaranteed for all citizens who are involved in a case or who have information about the circumstances of a case to objectively and fully furnish evidence and, except in special circumstances, they may be brought in to help the investigation.

Article 44 The public security organ's requests for approval of arrest, the People's Procuratorate's bills of prosecution and the People's Court's written judgments must be faithful to the facts. The responsibility of anyone who intentionally conceals the facts shall be investigated.

Article 45 The People's Courts, the People's Procuratorates and the public security organs shall have the authority to collect or obtain evidence from the units and individuals concerned. The units and individuals concerned shall provide truthful evidence.

Evidence involving State secrets shall be kept confidential.

Anyone that falsifies, conceals or destroys evidence, regardless of which side of a case he belongs to, must be investigated under law.

Article 46 In the decision of all cases, stress shall be laid on evidence, investigation and study; credence shall not be readily given to oral statements. A defendant cannot be found guilty and sentenced to a criminal punishment if there is only his statement but no evidence; the defendant may be found guilty and sentenced to a criminal punishment if evidence is sufficient and reliable, even without his statement.

Article 47 The testimony of a witness may be used as a basis in deciding a case only after the witness has been questioned and cross-examined in the courtroom by both sides, that is, the public prosecutor and victim as well as the defendant and defenders, and after the testimonies of the witnesses on all sides have been heard and verified. If a court discovers through investigation that a witness has intentionally given false testimony or concealed criminal evidence, it shall handle the matter in accordance with law.

Article 48 All those who have information about a case shall have the duty to testify.

Physically or mentally handicapped persons or minors who cannot distinguish right from wrong or cannot properly express themselves shall not be qualified as witnesses.

Article 49 The People's Courts, the People's Procuratorates and the public security organs shall insure the safety of witnesses and their near relatives.

Anyone who intimidates, humiliates, beats or retaliates against a witness or his near relatives, if his act constitutes a crime, shall be investigated for criminal responsibility according to law; if the case is not serious enough for criminal punishment, he shall be punished for violation of public security in accordance with law.

## Chapter VI Compulsory Measures

Article 50 The People's Courts, the People's Procuratorates and the public security organs may, according to the circumstances of a case, issue a warrant to compel the appearance of the criminal suspect or defendant, order him to obtain a guarantor pending trial or subject him to residential surveillance.

Article 51 The People's Courts, the People's Procuratorates and the public security organs may allow criminal suspects or defendants under any of the following conditions to obtain a guarantor pending trial or subject them to residential surveillance:

- (1) They may be sentenced to public surveillance, criminal detention or simply imposed with supplementary punishments; or
- (2) They may be imposed with a punishment of fixed-term imprisonment at least and would not endanger society if they are allowed to obtain a guarantor pending trial or are placed under residential surveillance.

The public security organs shall execute the decision on allowing a criminal suspect or defendant to obtain a guarantor pending trial or on subjecting him to residential surveillance.

Article 52 A criminal suspect or defendant in custody and his legal representatives or near relatives shall have the right to apply for obtaining a guarantor pending trial.

Article 53 If the People's Courts, the People's Procuratorates or the public security organs decide to allow a criminal suspect or defendant to obtain a guarantor pending trial, they shall order the criminal suspect or defendant to provide a guarantor or pay guaranty money.

Article 54 A guarantor must be a person who meets the following conditions:

- (1) to be not involved in the current case;
- (2) to be able to perform a guarantor's duties;
- (3) to be entitled to political rights and not subjected to restriction of personal freedom; and
- (4) to have a fixed domicile and steady income.

Article 55 A guarantor shall perform the following duties:

- (1) to see to it that the person under his guarantee observes the provisions of Article 56 of this Law; and
- (2) to promptly report to the executing organ when finding that the person under his guarantee may commit or has already committed acts in violation of the provisions of Article 56 of this Law.

If the guarantor fails to report promptly when the person under his guarantee has committed an act in violation of the provisions of Article 56 of this Law, he shall be fined. If the case constitutes a crime, criminal responsibility shall be investigated according to law.

Article 56 A criminal suspect or defendant who has obtained a guarantor pending trial shall observe the following provisions:

- (1) not to leave the city or county where he resides without permission of the executing organ;
- (2) to be present in time at a court when summoned;
- (3) not to interfere in any form with the witness when the latter gives testimony; and
- (4) not to destroy or falsify evidence or tally confessions.

If a criminal suspect or defendant who has obtained a guarantor pending trial violates the provisions of the preceding paragraph, the guaranty money paid shall be confiscated. In addition, in light of specific circumstances, the criminal suspect or defendant shall be ordered to write a statement of repentance, pay guaranty money or provide a guarantor again, or shall be subjected to residential surveillance or arrested. If a criminal suspect or defendant is found not to have violated the provisions in the preceding paragraph during the period when he has obtained a guarantor pending trial, the guaranty money shall be returned to him at the end of the period.

Article 57 A criminal suspect or defendant under residential surveillance shall observe the following provisions:

- (1) not to leave his domicile without permission of the executing organ or, if he has no fixed domicile, not to leave the designated residence without permission;

- (2) not to meet with others without permission of the executing organ;
- (3) to be present in time at a court when summoned;
- (4) not to interfere in any form with the witness when the latter gives testimony; and
- (5) not to destroy or falsify evidence or tally confessions.

If a criminal suspect or defendant under residential surveillance violates the provisions of the preceding paragraph and if the case is serious, he shall be arrested.

Article 58 The period granted by a People's Court, People's Procuratorate or public security organ to a criminal suspect or defendant for awaiting trial after obtaining a guarantor shall not exceed twelve months; the period for residential surveillance shall not exceed six months.

During the period when the criminal suspect or defendant is awaiting trial after obtaining a guarantor or when he is under residential surveillance, investigation, prosecution and handling of the case shall not be suspended. If it is discovered that the criminal suspect or the defendant should not be investigated for criminal responsibility or when the period for awaiting trial after obtaining a guarantor or the period of residential surveillance has expired, such period shall be terminated without delay. The person who has obtained a guarantor pending trial or who is under residential surveillance and the units concerned shall be notified of the termination immediately.

Article 59 Arrests of criminal suspects or defendants shall be subject to approval by a People's Procuratorate or decision by a People's Court and shall be executed by a public security organ.

Article 60 When there is evidence to support the facts of a crime and the criminal suspect or defendant could be sentenced to a punishment of not less than imprisonment, and if such measures as allowing him to obtain a guarantor pending trial or placing him under residential surveillance would be insufficient to prevent the occurrence of danger to society, thus necessitating his arrest, the criminal suspect or defendant shall be immediately arrested according to law.

If a criminal suspect or defendant who should be arrested is seriously ill or is a pregnant woman or a woman breast-feeding her own baby, he or she may be allowed to obtain a guarantor pending trial or be placed under residential surveillance.

Article 61 Public security organs may initially detain an active criminal or a major suspect under any of the following conditions:

- (1) if he is preparing to commit a crime, is in the process of committing a crime or is discovered immediately after committing a crime;
- (2) if he is identified as having committed a crime by a victim or an eyewitness;
- (3) if criminal evidence is found on his body or at his residence;
- (4) if he attempts to commit suicide or escape after committing a crime, or he is a fugitive;
- (5) if there is likelihood of his destroying or falsifying evidence or tallying confessions;

- (6) if he does not tell his true name and address and his identity is unknown; and
- (7) if he is strongly suspected of committing crimes from one place to another, repeatedly, or in a gang.

Article 62 When a public security organ is to detain or arrest a person in another place, it shall inform the public security organ in the place where the person to be detained or arrested stays, and the public security organ there shall cooperate in the action.

Article 63 The persons listed below may be seized outright by any citizen and delivered to a public security organ, a People's Procuratorate or a People's Court for handling:

- (1) any person who is committing a crime or is discovered immediately after committing a crime;
- (2) any person who is wanted for arrest;
- (3) any person who has escaped from prison; and
- (4) any person who is being pursued for arrest.

Article 64 When detaining a person, a public security organ must produce a detention warrant.

Within 24 hours after a person has been detained, his family or the unit to which he belongs shall be notified of the reasons for detention and the place of custody, except in circumstances where such notification would hinder the investigation or there is no way of notifying them.

Article 65 A public security organ shall interrogate a detainee within 24 hours after detention. If it is found that the person should not have been detained, he must be immediately released and issued a release certificate. If the public security organ finds it necessary to arrest a detainee when sufficient evidence is still lacking, it may allow the detainee to obtain a guarantor pending trial or place him under residential surveillance.

Article 66 When a public security organ wishes to arrest a criminal suspect, it shall submit a written request for approval of arrest together with the case file and evidence to the People's Procuratorate at the same level for examination and approval. When necessary, the People's Procuratorate may send procurators to participate in the public security organ's discussion of a major case.

Article 67 The chief procurator shall make the decision on a People's Procuratorate's examination and approval of the arrest of a criminal suspect. Major cases shall be submitted to the procuratorial committee for discussion and decision.

Article 68 After a People's Procuratorate has examined a case with respect to which a public security organ has submitted a request for approval of arrest, it shall decide according to the circumstances of the case either to approve the arrest or disapprove the arrest. If it decides to approve the arrest, the public security organ shall execute it immediately and inform the People's Procuratorate of the result without delay. If the People's Procuratorate disapproves the arrest, it shall give its reasons therefor; and if it deems a supplementary investigation necessary, it shall at the same time notify the public security organ of the need.

Article 69 If the public security organ deems it necessary to arrest a detainee, it shall, within three days after the detention, submit a request to the People's Procuratorate for examination and approval. Under special circumstances, the time limit for submitting a request for examination and approval may be extended by one to four days.

As to the arrest of a major suspect involved in crimes committed from one place to another, repeatedly, or in a gang, the time limit for submitting a request for examination and approval may be extended to 30 days.

The People's Procuratorate shall decide either to approve or disapprove the arrest within seven days from the date of receiving the written request for approval of arrest submitted by a public security organ. If the People's Procuratorate disapproves the arrest, the public security organ shall, upon receiving notification, immediately release the detainee and inform the People's Procuratorate of the result without delay. If further investigation is necessary, and if the released person meets the conditions for obtaining a guarantor pending trial or for residential surveillance, he shall be allowed to obtain a guarantor pending trial or subjected to residential surveillance according to law.

Article 70 If the public security organ considers the People's Procuratorate's decision to disapprove an arrest to be incorrect, it may request a reconsideration but must immediately release the detainee. If the public security organ's opinion is not accepted, it may request a review by the People's Procuratorate at the next higher level. The People's Procuratorate at the higher level shall immediately review the matter, decide whether or not to make a change and notify the People's Procuratorate at the lower level and the public security organ to implement its decision.

Article 71 When making an arrest, a public security organ must produce an arrest warrant.

Within 24 hours after an arrest, the family of the arrested person or the unit to which he belongs shall be notified of the reasons for arrest and the place of custody, except in circumstances where such notification would hinder the investigation or there is no way of notifying them.

Article 72 Interrogation must be conducted within 24 hours after the arrest, by a People's Court or People's Procuratorate with respect to a person it has decided to arrest, and by a public security organ with respect to a person it has arrested with the approval of the People's Procuratorate. If it is found that the person should not have been arrested, he must be immediately released and issued a release certificate.

Article 73 If a People's Court, a People's Procuratorate or a public security organ finds that the compulsory measures adopted against a criminal suspect or defendant are inappropriate, such measures shall be cancelled or modified without delay. If a public security organ releases a person arrested or substitute the measure of arrest with a different measure, it shall notify the People's Procuratorate that approved the arrest.

Article 74 If a case involving a criminal suspect or defendant in custody cannot be closed within the time limit stipulated by this Law for keeping the criminal suspect or defendant under custody for the sake of investigation, for conducting examination before prosecution, or for the procedure of first or second instance and thus further investigation, verification and handling are needed, the



criminal suspect or defendant may be allowed to obtain a guarantor pending trial or subjected to residential surveillance.

Article 75 If the compulsory measures adopted by a People's Court, a People's Procuratorate or a public security organ exceed the time limit prescribed by law, the criminal suspect or defendant, his legal representatives, near relatives, or the lawyers or other defenders entrusted by the criminal suspect or defendant shall have the right to demand cancellation of the compulsory measures. The People's Court, the People's Procuratorate, or the public security organ shall release the criminal suspect or defendant when the compulsory measures adopted against him have exceeded the time limit prescribed by law, terminate the period for awaiting trial after obtaining a guarantor or for residential surveillance, or take different compulsory measures according to law.

Article 76 If in the process of examining and approving arrests, a People's Procuratorate discovers illegalities in the investigatory activities of a public security organ, it shall notify the public security organ to make corrections, and the public security organ shall notify the People's Procuratorate of the corrections it has made.

## Chapter VII Incidental Civil Actions

Article 77 If a victim has suffered material losses as a result of the defendant's criminal act, he shall have the right to file an incidental civil action during the course of the criminal proceeding.

If losses have been caused to State property or collective property, the People's Procuratorate may file an incidental civil action while initiating a public prosecution.

When necessary, the People's Court may seal up or distrain upon the property of the defendant.

Article 78 An incidental civil action shall be heard together with the criminal case. Only for the purpose of preventing excessive delay in a trial of the criminal case may the same judicial organization, after completing the trial of the criminal case, continue to hear the incidental civil action.

## Chapter VIII Time Periods and Service

Article 79 Time periods shall be calculated by the hour, the day and the month.

The hour and day from which a time period begins shall not be counted as within the time period.

A legally prescribed time period shall not include travelling time. Appeals or other documents that have been mailed before the expiration of the time period shall not be regarded as overdue.

Article 80 When a party cannot meet a deadline due to irresistible causes or for other legitimate reasons, he may, within five days after the obstacle is removed, apply to continue the proceedings that should have been completed before the expiration of the time period.

A People's Court shall decide whether or not to approve the application described in the preceding paragraph.

Article 81 Summons, notices and other court documents shall be delivered to the addressee himself; if the addressee is absent, the documents may be received on his behalf by an adult member of his family or a responsible person of his unit.

If the addressee or a recipient on his behalf refuses to accept the documents or refuses to sign and affix his seal to the receipt, the person serving the documents may ask the addressee's neighbours or other witnesses to the scene, explain the situation to them, leave the documents at the addressee's residence, record on the service certificate the particulars of the refusal and the date of service and sign his name to it; the service shall thus be deemed to have been completed.

## Chapter IX Other Provisions

Article 82 For the purpose of this law, the definitions of the following terms are:

- (1) "Investigation" means the specialized investigatory work and related compulsory measures carried out according to law by the public security organs and People's Procuratorates in the process of handling cases.
- (2) "Parties" means victims, private prosecutors, criminal suspects, defendants and the plaintiffs and defendants in incidental civil actions.
- (3) "Legal representatives" means the parents, foster parents or guardians of a person being represented and representatives of the State organ or public organization responsible for that person's protection;
- (4) "Participants in the proceedings" means the parties, legal representatives, agents ad litem, defenders, witnesses, expert witnesses and interpreters;
- (5) "agents ad litem" means persons entrusted by victims in cases of public prosecution and their legal representatives or near relatives and by private prosecutors in cases of private prosecution and their legal representatives to participate in legal proceedings on their behalf, and persons entrusted by parties in incidental civil actions and their legal representatives to participate in legal proceedings on their behalf.
- (6) "Near relatives" means a person's husband or wife, father, mother, sons, daughters, and brothers and sisters born of the same parents.

## Part Two Filing a Case, Investigation, and Initiation of Public Prosecution

### Chapter I Filing a Case

Article 83 The public security organs or the People's Procuratorates shall, upon discovering facts of crimes or criminal suspects, file the cases for investigation within the scope of their jurisdiction.

Article 84 Any unit or individual, upon discovering facts of a crime or a criminal suspect, shall have the right and duty to report the case or provide information to a public security organ, a People's Procuratorate or a People's Court.

When his personal or property rights are infringed upon, the victim shall have the right to report to a public security organ, a People's Procuratorate or a People's Court about the facts of the crime or bring a complaint to it against the criminal suspect.

The public security organ, the People's Procuratorate or the People's Court shall accept all reports, complaints and information. If a case does not fall under its jurisdiction, it shall refer the case to the competent organ and notify the person who made the report, lodged the complaint or provided the information. If the case does not fall under its jurisdiction but calls for emergency measures, it shall take emergency measures before referring the case to the competent organ.

Where an offender delivers himself up to a public security organ, a People's Procuratorate or a People's Court, the provisions of the third paragraph shall apply.

Article 85 Reports, complaints and information may be filed in writing or orally. The officer receiving an oral report, complaint or information shall make a written record of it, which, after being read to the reporter, complainant or informant and found free of error, shall be signed or sealed by him or her.

The officer receiving the complaint or information shall clearly explain to the complainant or the informant the legal responsibility that shall be incurred for making a false accusation. However, a complaint or information that does not accord with the facts, or even a mistaken complaint shall be strictly distinguished from a false accusation, as long as no fabrication of facts or falsification of evidence is involved.

The public security organs, the People's Procuratorates and the People's Courts shall insure the safety of reporters, complainants and informants as well as their near relatives. If the reporters, complainants or informants wish not to make their names and acts of reporting, complaining or informing known to the public, these shall be kept confidential for them.

Article 86 A People's Court, People's Procuratorate or public security organ shall, within the scope of its jurisdiction, promptly examine the materials provided by a reporter, complainant or informant and the confession of an offender who has voluntarily surrendered. If it believes that

there are facts of a crime and criminal responsibility should be investigated, it shall file a case. If it believes that there are no facts of a crime or that the facts are obviously incidental and do not require investigation of criminal responsibility, it shall not file a case and shall notify the complainant of the reason. If the complainant does not agree with the decision, he may ask for reconsideration.

Article 87 Where a People's Procuratorate considers that a case should be filed for investigation by a public security organ but the latter has not done so, or where a victim considers that a case should be filed for investigation by a public security organ but the latter has not done so and the victim has brought the matter to a People's Procuratorate, the People's Procuratorate shall request the public security organ to state the reasons for not filing the case. If the People's Procuratorate considers that the reasons for not filing the case given by the public security organ are untenable, it shall notify the public security organ to file the case, and upon receiving the notification, the public security organ shall file the case.

Article 88 As to a case of private prosecution, the victim shall have the right to bring a suit directly to a People's Court. If the victim is dead or has lost his ability of conduct, his legal representatives and near relatives shall have the right to bring a suit to a People's Court. The People's Court shall accept it according to law.

## Chapter II Investigation

### Section 1 General Provisions

Article 89 With respect to a criminal case which has been filed, the public security organ shall carry out investigation, collecting and obtaining evidence to prove the criminal suspect guilty or innocent or to prove the crime to be minor or grave. Active criminals or major suspects may be detained first according to law, and criminal suspects who meet the conditions for arrest shall be arrested according to law.

Article 90 After investigation, the public security organ shall start preliminary inquiry into a case for which there is evidence that supports the facts of the crime, in order to verify the evidence which has been collected and obtained.

### Section 2 Interrogation of the Criminal Suspect

Article 91 Interrogation of a criminal suspect must be conducted by the investigators of a People's Procuratorate or public security organ. During an interrogation, there must be no fewer than two investigators participating.

Article 92 A criminal suspect who need not be arrested or detained may be summoned to a designated place in the city or county where the criminal suspect stays for interrogation, or he may be interrogated at his residence. However, the interrogators shall produce their papers issued by a People's Procuratorate or a public security organ.

The time for interrogation through summons or forced appearance shall not exceed 12 hours. A criminal suspect shall not be detained under the disguise of successive summons or forced appearance.

Article 93 When interrogating a criminal suspect, the investigators shall first ask the criminal suspect whether or not he has committed any criminal act, and let him state the circumstances of his guilt or explain his innocence; then they may ask him questions. The criminal suspect shall answer the investigators' questions truthfully, but he shall have the right to refuse to answer any questions that are irrelevant to the case.

Article 94 During the interrogation of a criminal suspect who is deaf or mute, an officer who has a good command of sign language shall participate, and such circumstances shall be noted in the record.

Article 95 The record of an interrogation shall be shown to the criminal suspect for checking; if the criminal suspect cannot read, the record shall be read to him. If there are omissions or errors in the record, the criminal suspect may make additions or corrections. When the criminal suspect acknowledges that the record is free from error, he shall sign or affix his seal to it. The investigators shall also sign the record. If the criminal suspect requests to write a personal statement, he shall be permitted to do so. When necessary, the investigators may also ask the criminal suspect to write a personal statement.

Article 96 After the criminal suspect is interrogated by an investigation organ for the first time or from the day on which compulsory measures are adopted against him, he may appoint a lawyer to provide him with legal advice and to file petitions and complaints on his behalf. If the criminal suspect is arrested, the appointed lawyer may apply on his behalf for obtaining a guarantor pending trial. If a case involves State secrets, the criminal suspect shall have to obtain the approval of the investigation organ for appointing a lawyer.

The appointed lawyer shall have the right to find out from the investigation organ about the crime suspected of, and may meet with the criminal suspect in custody to enquire about the case. When the lawyer meets with the criminal suspect in custody, the investigation organ may, in light of the seriousness of the crime and where it deems it necessary, send its people to be present at the meeting. If a case involves State secrets, before the lawyer meets with the criminal suspect, he shall have to obtain the approval of the investigation organ.

### Section 3 Questioning of the Witnesses

Article 97 Investigators may question a witness at his unit or residence, but they must produce a certificate issued by a People's Procuratorate or public security organ. When necessary, they may also notify the witness to give testimony at the People's Procuratorate or public security organ.

Witnesses shall be questioned individually.

Article 98 When a witness is questioned, he shall be instructed to provide evidence and give testimony truthfully and shall be informed of the legal responsibility that shall be incurred for intentionally giving false testimony or concealing criminal evidence.

When a witness under the age of 18 is questioned, his legal representative may be notified to be present.

Article 99 The provisions of Article 95 of this Law shall also apply to the questioning of witnesses.

Article 100 The provisions of all articles in this Section shall apply to the questioning of victims.

#### Section 4 Inquest and Examination

Article 101 Investigators shall conduct an inquest or examination of the sites, objects, people and corpses relevant to a crime. When necessary, experts may be assigned or invited to conduct an inquest or examination under the direction of the investigators.

Article 102 Each and every unit and individual shall have the duty to preserve the scene of a crime and to immediately notify a public security organ to send officers to hold an inquest.

Article 103 To conduct an inquest or examination, the investigators must have papers issued by a People's Procuratorate or a public security organ.

Article 104 If the cause of a death is unclear, a public security organ shall have the power to order an autopsy and shall notify the family members of the deceased to be present.

Article 105 An examination may be conducted of the person of the victim or criminal suspect in order to ascertain some of his characteristics or physiological condition, or the circumstances of the injury.

If a criminal suspect refuses to be examined, the investigators, when they deem it necessary, may conduct a compulsory examination.

Examination of the persons of women shall be conducted by female officers or doctors.

Article 106 A record shall be made of the circumstances of an inquest or examination, and it shall be signed or sealed by the participants in the inquest or examination and the eyewitnesses.

Article 107 If, in reviewing a case, a People's Procuratorate deems it necessary to repeat an inquest or examination that has been done by a public security organ, it may ask the latter to conduct another inquest or examination and may send procurators to participate in it.

Article 108 When necessary and with the approval of the director of a public security bureau, investigative experiments may be conducted in order to clarify the circumstances of a case.

In conducting investigative experiments, it shall be forbidden to take any action which is hazardous, humiliating to anyone, or offensive to public morals.

#### Section 5 Search

Article 109 In order to collect criminal evidence and track down an offender, investigators may search the person, belongings and residence of the criminal suspect and anyone who might be hiding a criminal or criminal evidence, as well as other relevant places.

Article 110 Any unit or individual shall have the duty, as required by the People's Procuratorate or the public security organ, to hand over material evidence, documentary evidence or audio-visual material which may prove the criminal suspect guilty or innocent.

Article 111 When a search is to be conducted, a search warrant must be shown to the person to be searched.

If an emergency occurs when an arrest or detention is being made, a search may be conducted without a search warrant.

Article 112 During a search, the person to be searched or his family members, neighbours or other eyewitnesses shall be present at the scene.

Searches of the persons of women shall be conducted by female officers.

Article 113 A record shall be made of the circumstances of a search, and it shall be signed or sealed by the investigators and the person searched or his family members, neighbours or other eyewitnesses. If the person searched or his family members have become fugitives or refuse to sign or affix their seals to the record, this shall be noted in the record.

#### Section 6 Seizure of Material Evidence and Documentary Evidence

Article 114 Any articles and documents discovered during an inquest or search that may be used to prove a criminal suspect's guilt or innocence shall be seized. Articles and documents which are irrelevant to the case may not be seized.

Seized articles and documents shall be properly kept or sealed for safekeeping and may not be utilized or damaged.

Article 115 All seized articles and documents shall be carefully checked by the investigators jointly with the eyewitnesses and the holder of the articles; a detailed list shall be made in duplicate on the spot and shall be signed or sealed by the investigators, the eyewitnesses and the holder. One copy of the list shall be given to the holder, and the other copy shall be kept on file for reference.

Article 116 If the investigators deem it necessary to seize the mail or telegrams of a criminal suspect, they may, upon approval of a public security organ or a People's Procuratorate, notify the post and telecommunications offices to check and hand over the relevant mail and telegrams for seizure.

When it becomes unnecessary to continue a seizure, the post and telecommunications offices shall be immediately notified.

Article 117 The People's Procuratorates and the public security organs may, as required by investigation of crimes, inquire into or freeze criminal suspects' deposits or remittances according to regulations.

If the deposits or remittances of the criminal suspects have been frozen, they shall not be frozen for a second time.

Article 118 If any seized articles, documents, mail, telegrams or frozen deposits and remittances are proved through investigation to be truly irrelevant to a case, the seizure and freeze shall be cancelled within three days, and the things shall be returned to their original owners or the original post and telecommunications offices.

#### Section 7 Expert Evaluation

Article 119 When certain special problems relating to a case need to be solved in order to clarify the circumstances of the case, experts shall be assigned or invited to give their evaluations.

Article 120 After evaluating a matter, the experts shall write a conclusion of expert evaluation and affix his signature to it.

Reverification necessitated by disputes over medical verification of personal injuries and medical verification of mental illness shall be conducted by a hospital designated by a people's government at the provincial level. After verification, the expert shall make a conclusion in writing, to which his signature and the hospital's seal shall be affixed.

If an expert intentionally makes a false verification, he shall assume legal responsibility.

Article 121 The investigation organ shall notify the criminal suspect and the victim of the conclusion of the expert verification which will be used as evidence in his case. A supplementary expert verification or another expert verification may be conducted upon application submitted by the criminal suspect or the victim.

Article 122 The period during which the mental illness of a criminal suspect is under verification shall not be included in the period of time for handling the case.

#### Section 8 Wanted Orders

Article 123 If a criminal suspect who should be arrested is a fugitive, a public security organ may issue a wanted order and take effective measures to pursue him for arrest and bring him to justice.

Public security organs at any level may directly issue wanted orders within the areas under their jurisdiction; they shall request a higher-level organ with the proper authority to issue such orders for areas beyond their jurisdiction.

#### Section 9 Conclusion of Investigation

Article 124 The time limit for holding a criminal suspect in custody during investigation after arrest shall not exceed two months. If the case is complex and cannot be concluded within the time limit, an extension of one month may be allowed with the approval of the People's Procuratorate at the next higher level.

Article 125 If due to special reasons, it is not appropriate to hand over a particularly grave and complex case for trial even within a relatively long period of time, the Supreme People's Procuratorate shall submit a report to the Standing Committee of the National People's Congress for approval of postponing the hearing of the case.



Article 126 With respect to the following cases, if investigation cannot be concluded within the time limit specified in Article 124 of this Law, an extension of two months may be allowed upon approval or decision by the People's Procuratorate of a province, autonomous region or municipality directly under the Central Government:

- (1) grave and complex cases in outlying areas where traffic is most inconvenient;
- (2) grave cases that involve criminal gangs;
- (3) grave and complex cases that involve people who commit crimes from one place to another; and
- (4) grave and complex cases that involve various quarters and for which it is difficult to obtain evidence.

Article 127 If in the case of a criminal suspect who may be sentenced to fixed-term imprisonment of ten years at least, investigation of the case can still not be concluded upon expiration of the extended time limit as provided in Article 126 of this Law, another extension of two months may be allowed upon approval or decision by the People's Procuratorate of a province, autonomous region or municipality directly under the Central Government.

Article 128 If during the period of investigation a criminal suspect is found to have committed other major crimes, the time limit for holding the criminal suspect in custody during investigation shall be recalculated, in accordance with the provisions of Article 124 of this Law, from the date on which such crimes are found.

If a criminal suspect does not tell his true name and address and his identity is unknown, the time limit for holding him in custody during investigation shall be calculated from the date on which his identity is found out. However, before then, the investigation into his crime and obtaining of evidence shall not be ceased. If the facts of a crime are clear and the evidence is reliable and sufficient, the case may, by the name given by the criminal suspect himself, be transferred to a People's Procuratorate for examination and prosecution.

Article 129 After a public security organ has concluded its investigation of a case, the facts should be clear and the evidence reliable and sufficient and, in addition, it shall make a written recommendation for prosecution, which shall be transferred, together with the case file and evidence, to the People's Procuratorate at the same level for examination and decision.

Article 130 If it is discovered during investigation that a criminal suspect's criminal responsibility should not have been investigated, the case shall be dismissed; if the criminal suspect is under arrest, he shall be released immediately and issued a release certificate, and the People's Procuratorate which originally approved the arrest shall be notified.

## Section 10 Investigation of Cases Directly Accepted by the People's Procuratorates

Article 131 Investigation of cases directly accepted by the People's Procuratorates shall be governed by the provisions of this Chapter.

Article 132 If a case directly accepted by a People's Procuratorate conforms with the conditions provided in Article 60 and in sub-paragraph (4) or sub-paragraph (5) of Article 61 of this Law, thus arrest or detention of the criminal suspect is necessitated, the decision thereon shall be made by the People's Procuratorate and executed by a public security organ.

Article 133 A detainee in a case directly accepted by a People's Procuratorate shall be interrogated within 24 hours after the detention. If it is found that the person should not have been detained, he must be released immediately and issued a release certificate. If an arrest is necessitated but the evidence is insufficient, the detainee may be allowed to obtain a guarantor pending trial or be subjected to residential surveillance.

Article 134 If a People's Procuratorate deems it necessary to arrest a detainee in a case directly accepted by it, it shall make a decision thereon within 10 days after the detention. Under special circumstances, the time limit for deciding on an arrest may be extended by one to four days. If arrest is unnecessary, the detainee shall be released immediately; if the case requires further investigation and the detainee meets the conditions for obtaining a guarantor pending trial or for residential surveillance, he shall be allowed to obtain a guarantor pending trial or be subjected to residential surveillance according to law.

Article 135 After a People's Procuratorate has concluded its investigation of a case, it shall make a decision to initiate public prosecution, not to initiate a prosecution or to dismiss the case.

### Chapter III Initiation of Public Prosecution

Article 136 All cases requiring initiation of a public prosecution shall be examined for decision by the People's Procuratorates.

Article 137 In examining a case, a People's Procuratorate shall ascertain:

- (1) whether the facts and circumstances of the crime are clear, whether the evidence is reliable and sufficient and whether the charge and the nature of the crime has been correctly determined;
- (2) whether there are any crimes that have been omitted or other persons whose criminal responsibility should be investigated;
- (3) whether it is a case in which criminal responsibility should not be investigated;
- (4) whether the case has an incidental civil action; and
- (5) whether the investigation of the case is being lawfully conducted.

Article 138 A People's Procuratorate shall make a decision within one month on a case that a public security organ has transferred to it with a recommendation to initiate a prosecution; an extension of a half month may be allowed for major or complex cases.

If jurisdiction over a case to be examined and prosecuted by a People's Procuratorate is altered, the time limit for examination and prosecution shall be calculated from the date on which another People's Procuratorate receives the case after the alteration.

Article 139 When examining a case, the People's Procuratorate shall interrogate the criminal suspect and heed the opinions of the victim and of the persons entrusted by the criminal suspect and the victim.

Article 140 In examining a case, the People's Procuratorate may request a public security organ to provide the evidence that is essential to the trial in court.

In examining a case that requires supplementary investigation, the People's Procuratorate may remand the case to a public security organ for supplementary investigation or conduct the investigation itself.

In cases where supplementary investigation is to be conducted, it shall be completed within one month. Supplementary investigation may be conducted twice at most. When supplementary investigation is completed and the case is transferred to the People's Procuratorate, the time limit for examination and prosecution shall be recalculated by the People's Procuratorate.

With respect to a case for which supplementary investigation has been conducted, if the People's Procuratorate still believes that the evidence is insufficient and the case does not meet the conditions for initiation of a prosecution, the People's Procuratorate may decide not to initiate a prosecution.

Article 141 When a People's Procuratorate considers that the facts of a criminal suspect's crime have been ascertained, that the evidence is reliable and sufficient and that criminal responsibility should be investigated according to law, it shall make a decision to initiate a prosecution and shall, in accordance with the provisions for trial jurisdiction, initiate a public prosecution in a People's Court.

Article 142 If a criminal suspect is found to be under one of the circumstances provided in Article 15 of this Law, the People's Procuratorate shall make a decision not to initiate a prosecution.

With respect to a case that is minor and the offender need not be given criminal punishment or need be exempted from it according to the Criminal Law, the People's Procuratorate may decide not to initiate a prosecution.

With respect to a case for which the People's Procuratorate has decided not to initiate a prosecution, the People's Procuratorate shall, at the same time, cancel the seizure or freeze of the property or things of value seized or frozen during the period of investigation. If the person against whom prosecution is not to be initiated need be given administrative penalty or administrative sanction or his illegal gains need be confiscated, the People's Procuratorate shall make suggestions to such an effect and transfer the case to the competent organ for handling. The competent organ shall, without delay, inform the People's Procuratorate of how it has handled the case.

Article 143 A decision not to initiate a prosecution shall be announced publicly, and the decision shall, in written form, be delivered to the person who is not to be prosecuted and his unit. If the said person is in custody, he shall be released immediately.

Article 144 With respect to a case transferred by a public security organ for prosecution, if the People's Procuratorate decides not to initiate a prosecution, it shall deliver the decision in writing to the public security organ. If the public security organ considers that the decision not to initiate a prosecution is wrong, it may demand reconsideration, and if the demand is rejected, it may submit the matter to the People's Procuratorate at the next higher level for review.

Article 145 If the People's Procuratorate decides not to initiate a prosecution with respect to a case that involves a victim, it shall send the decision in writing to the victim. If the victim refuses to accept the decision, he may, within seven days after receiving the written decision, present a petition to the People's Procuratorate at the next higher level and request the latter to initiate a public prosecution. The People's Procuratorate shall notify the victim of its decision made after reexamination. If the People's Procuratorate upholds the decision not to initiate a prosecution, the victim may bring a lawsuit to a People's Court. The victim may also bring a lawsuit directly to a People's Court without presenting a petition first. After the People's Court has accepted the case, the People's Procuratorate shall transfer the relevant case file to the People's Court.

Article 146 If the person against whom a People's Procuratorate decides, in accordance with the provisions of the second paragraph of Article 142 of this Law, not to initiate a prosecution still refuses to accept the decision, he may present a petition to the People's Procuratorate within seven days after receiving the written decision. The People's Procuratorate shall make a decision to conduct a reexamination, notify the person against whom no prosecution is to be initiated and at the same time send a copy of the decision to the public security organ .

## Part Three Trial

### Chapter I Trial Organizations

Article 147 Trials of cases of first instance in the Primary and Intermediate People's Courts shall be conducted by a collegial panel composed of three judges or of judges and people's assessors totalling three. However, cases in which summary procedure is applied in the Primary People's Courts may be tried by a single judge alone.

Trials of cases of first instance in the Higher People's Courts or the Supreme People's Court shall be conducted by a collegial panel composed of three to seven judges or of judges and people's assessors totalling three to seven.

When performing their functions in the People's Courts, the people's assessors shall enjoy equal rights with the judges.

Trials of appealed and protested cases in the People's Courts shall be conducted by a collegial panel composed of three to five judges.

The members of a collegial panel shall be odd in number.

The president of the People's Court or the chief judge of a division shall designate one judge to be the presiding judge of the collegial panel. If the president of the court or the chief judge of a division participates in a trial, he himself shall serve as the presiding judge.

Article 148 If opinions differ when a collegial panel conducts its deliberations, a decision shall be made in accordance with the opinions of the majority, but the opinions of the minority shall be entered in the records. The records of the deliberations shall be signed by the members of the collegial panel.

Article 149 After the hearings and deliberations, the collegial panel shall render a judgment. With respect to a difficult, complex or major case, on which the collegial panel considers it difficult to make a decision, the collegial panel shall refer the case to the president of the court for him to decide whether to submit the case to the judicial committee for discussion and decision. The collegial panel shall execute the decision of the judicial committee.

## Chapter II Procedure of First Instance

### Section 1 Cases of Public Prosecution

Article 150 After a People's Court has examined a case in which public prosecution was initiated, it shall decide to open the court session and try the case, if the bill of prosecution contains clear facts of the crime accused and, in addition, there are a list of evidence and a list of witnesses as well as duplicates or photos of major evidence attached to it.

Article 151 After a People's Court has decided to open a court session, it shall proceed with the following work:

- (1) to determine the members of the collegial panel;
- (2) to deliver to the defendant a copy of the bill of prosecution of the People's Procuratorate no later than ten days before the opening of the court session. If the defendant has not appointed a defender, he shall be informed that he may appoint a defender or, when necessary, designate a lawyer that is obligated to provide legal aid to serve as a defender for him.
- (3) to notify the People's Procuratorate of the time and place of the court session three days before the opening of the session;
- (4) to summon the parties and notify the defenders, agents ad litem, witnesses, expert witnesses and interpreters, and deliver the summons and notices no later than three days before the opening of the court session; and

(5) to announce, three days before the opening of the session, the subject matter of the case to be heard in public, the name of the defendant and the time and place of the court session.

The circumstances of the above-mentioned proceedings shall be entered in the written record, which shall be signed by the judges and the court clerk.

Article 152 Cases of first instance in a People's Court shall be heard in public. However, cases involving State secrets or private affairs of individuals shall not be heard in public.

No cases involving crimes committed by minors who have reached the age of 14 but not the age of 16 shall be heard in public. Generally, cases involving crimes committed by minors who have reached the age of 16 but not the age of 18 shall also not be heard in public.

The reason for not hearing a case in public shall be announced in court.

Article 153 When a case of public prosecution is being tried in a People's Court, the People's Procuratorate shall send its procurators to the court to support the public prosecution. However, when a case is to be tried through summary procedure, the People's Procuratorate may send no procurators to the court, as provided by the provisions of Article 175 of this Law.

Article 154 When a court session opens, the presiding judge shall ascertain if all the parties have appeared in court and announce the subject matter of the case. He shall announce the roll, naming the members of the collegial panel, the court clerk, the public prosecutor, the defender, agent ad litem, the expert witnesses and the interpreter; he shall inform the parties of their right to apply for withdrawal of any member of the collegial panel, the court clerk, the public prosecutor, any expert witnesses or the interpreter; and he shall inform the defendant of his right to defence.

Article 155 After the public prosecutor has read out the bill of prosecution in court, the defendant and the victim may present statements regarding the crime accused in the bill of prosecution, and the public prosecutor may interrogate the defendant.

The victim, the plaintiff and defender in an incidental civil action and the agents ad litem may, with the permission of the presiding judge, put questions to the defendant.

The judges may interrogate the defendant.

Article 156 Before a witness gives testimony, the judges shall instruct him to give testimony truthfully and explain to him the legal responsibility that shall be incurred for intentionally giving false testimony or concealing criminal evidence. The public prosecutor, the parties, the defenders and agents ad litem, with the permission of the presiding judge, may question the witnesses and expert witnesses. If the presiding judge considers any questioning irrelevant to the case, he shall put a stop to it.

The judges may question the witnesses and expert witnesses.

Article 157 The public prosecutor and the defenders shall show the material evidence to the court for the parties to identify; the records of testimony of witnesses who are not present in court, the conclusions of expert witnesses who are not present in court, the records of inquests and other

documents serving as evidence shall be read out in court. The judges shall heed the opinions of the public prosecutor, the parties, the defenders and the agents ad litem.

Article 158 During a court hearing, if the collegial panel has doubts about the evidence, it may announce an adjournment, in order to carry out investigation to verify the evidence.

When carrying out investigation to verify evidence, the People's Court may conduct inquest, examination, seizure, expert evaluation, as well as inquiry and freeze.

Article 159 During a court hearing, the parties, the defenders and agents ad litem shall have the right to request new witnesses to be summoned, new material evidence to be obtained, a new expert evaluation to be made, and another inquest to be held.

The court shall make a decision whether to grant the above-mentioned requests.

Article 160 With the permission of the presiding judge, the public prosecutor, the parties, the defenders and the agents ad litem may state their views on the evidence and the case, and they may debate with each other. After the presiding judge has declared conclusion of the debate, the defendant shall have the right to present a final statement.

Article 161 If any participant in the proceedings of a trial or by-stander violates the order of the courtroom, the presiding judge shall warn him to desist. If any person fails to obey, he may forcibly be taken out of the courtroom. If the violation is serious, the person shall be fined not more than 1,000 yuan or detained not more than 15 days. The fine or detention shall be subject to approval of the president of the court. If the person under punishment is not satisfied with the decision on the fine or detention, he may apply to the People's Court at the next higher level for reconsideration. However, the execution of the fine or detention shall not be suspended during the period of reconsideration.

Whoever assembles a crowd to make an uproar or charges into the courtroom, or humiliates, slanders, intimidates or beats up judicial officers or participants in the proceedings, thereby seriously disturbing the order of the courtroom, which constitutes a crime, shall be investigated for criminal responsibility according to law.

Article 162 After a defendant makes his final statement, the presiding judge shall announce an adjournment and the collegial panel shall conduct its deliberations and, on the basis of the established facts and evidence and in accordance with the provisions of relevant laws, render one of the following judgments:

- (1) if the facts of a case are clear, the evidence is reliable and sufficient, and the defendant is found guilty in accordance with law, he shall be pronounced guilty accordingly;
- (2) if the defendant is found innocent in accordance with law, he shall be pronounced innocent accordingly;
- (3) if the evidence is insufficient and thus the defendant cannot be found guilty, he shall be pronounced innocent accordingly on account of the fact that the evidence is insufficient and the accusation unfounded.

Article 163 In all cases, judgments shall be pronounced publicly.

If the judgment on a case is pronounced in court, a written form of the judgment shall be delivered within five days to the parties and the People's Procuratorate that initiated the public prosecution. In cases where the judgment is pronounced later on a fixed date, a written form of the judgment shall be delivered immediately after the pronouncement to the parties and the People's Procuratorate that initiated the public prosecution.

Article 164 The written judgment shall be signed by the members of the collegial panel and by the court clerk, and the time limit for appeal and the name of the appellate court shall be clearly indicated therein.

Article 165 A hearing may be postponed if during a trial one of the following situations affecting the conduct of the trial occurs:

- (1) if it is necessary to summon new witnesses, obtain new material evidence, make a new expert evaluation or hold another inquest;
- (2) if the procurators find that a case for which public prosecution has been initiated requires supplementary investigation, and they make a proposal to that effect; or
- (3) if the trial cannot proceed because a party applies for the withdrawal of a judicial officer.

Article 166 If the hearings of a case is postponed in accordance with the provisions of subparagraph (2) in Article 165 of this Law, the People's Procuratorate shall complete the supplementary investigation within one month.

Article 167 The court clerk shall make a written record of the entire court proceedings, which shall be examined by the presiding judge and then signed by him and the court clerk.

That portion of the courtroom record comprising the testimony of witnesses shall be read out in court or given to the witnesses to read. After the witnesses acknowledge that the record is free of error, they shall sign or affix their seals to it.

The courtroom record shall be given to the parties to read or shall be read out to them. If a party considers that there are omissions or errors in the record, he may request additions or corrections to be made. After the parties acknowledge that the record is free of error, they shall sign or affix their seals to it.

Article 168 A People's Court shall pronounce judgment on a case of public prosecution within one month or, one and a half months at the latest, after accepting it. Under one of the situations provided in Article 126 of this Law, the period may be extended by one more month upon approval or decision by the Higher People's Court of a province, autonomous region or municipality directly under the Central Government.

If jurisdiction of a People's Court over a case is altered, the time limit for handling the case shall be calculated from the date on which another People's Court receives the case after the alteration.



As to a case for which a People's Procuratorate has to conduct supplementary investigation, the People's Court shall start to calculate anew the time lime for handling the case after the supplementary investigation has been completed and the case has been transferred to it.

Article 169 If a People's Procuratorate discovers that in handling a case a People's Court has violated the litigation procedure prescribed by law, it shall have the power to suggest to the People's Court that it should set it right.

## Section 2 Cases of Private Prosecution

Article 170 Cases of private prosecution include the following:

- (1) cases to be handled only upon complaint;
- (2) cases for which the victims have evidence to prove that those are minor criminal cases; and
- (3) cases for which the victims have evidence to prove that the defendants should be investigated for criminal responsibility according to law because their acts have infringed upon the victims' personal or property rights, whereas, the public security organs or the People's Procuratorates do not investigate the criminal responsibility of the accused.

Article 171 After examining a case of private prosecution, the People's Court shall handle it in one of the following manners in light of the different situations:

- (1) If the facts of the crime are clear and the evidence is sufficient, the case shall be tried at a court session; or
- (2) In a case of private prosecution for which criminal evidence is lacking, if the private prosecutor cannot present supplementary evidence, the court shall persuade him to withdraw his prosecution or order its rejection.

If a private prosecutor, having been served twice with a summons according to law, refuses to appear in court without justifiable reasons, or if he withdraws from a court session without permission of the court, the case may be considered withdrawn by him.

If during the trial of a case the judges have doubts about the evidence and consider it necessary to conduct investigation to verify the evidence, the provisions of Article 158 of this Law shall apply.

Article 172 A People's Court may conduct mediation in a case of private prosecution; the private prosecutor may arrange a settlement with the defendant or withdraw his prosecution before a judgment is pronounced. Mediation shall not be conducted for cases stipulated in sub-paragraph (3) of Article 170 of this Law.

Article 173 In the process of the proceedings, the defendant in a case of private prosecution may raise a counterclaim against the private prosecutor. The provisions governing private prosecutions shall apply to counterclaims.

## Section 3 Summary Procedure

Article 174 The People's Court may apply summary procedure to the following cases, which shall be tried by a single judge alone:

- (1) cases of public prosecution where the defendants may be lawfully sentenced to fixed-term imprisonment of not more than three years, criminal detention, public surveillance or punished with fines exclusively, where the facts are clear and the evidence is sufficient, and for which the People's Procuratorate suggests or agrees to the application of summary procedure;
- (2) cases to be handled only upon complaint; and
- (3) cases prosecuted by the victims, for which there is evidence to prove that they are minor criminal cases.

Article 175 For a case of public prosecution that is tried through summary procedure, the People's Procuratorate may send no procurators to the court. The defendant may present a statement and defend himself regarding the crimes accused in the bill of prosecution. In cases where the People's Procuratorate sends procurators to the court, the defendant and his defenders may, with permission of the judges, debate with the public prosecutor.

Article 176 In a case of private prosecution that is tried through summary procedure, after the bill of prosecution is read out, the defendant and his defenders may, with the permission of the judges, debate with the private prosecutor and his agents ad litem.

Article 177 Trial of cases through summary procedure shall not be subject to the provisions of Section 1 of this Chapter governing the procedures of interrogating the defendant, questioning the witnesses and expert witnesses, showing the evidence, and debating in court. However, before the judgment is pronounced, the final statement of the defendant shall be heard.

Article 178 For a case to be tried through summary procedure, the People's Court shall conclude it within 20 days after accepting it.

Article 179 If in the course of trying a case the People's Court discovers that the summary procedure is not appropriate for the case, it shall try it anew in accordance with the provisions in Section 1 or Section 2 of this Chapter.

### Chapter III Procedure of Second Instance

Article 180 If the defendant, private prosecutor or their legal representatives refuse to accept a judgment or order of first instance made by a local People's Court at any level, they shall have the right to appeal in writing or orally to the People's Court at the next higher level. Defenders or near relatives of the defendant may, with the consent of the defendant, file appeals.

A party to an incidental civil action or his legal representative may file an appeal against that part of a judgment or order of first instance made by a local People's Court at any level that deals with the incidental civil action .

A defendant shall not be deprived on any pretext of his right to appeal.

Article 181 If a local People's Procuratorate at any level considers that there is some definite error in a judgment or order of first instance made by a People's Court at the same level, it shall present a protest to the People's Court at the next higher level.

Article 182 If the victim or his legal representative refuses to accept a judgment of first instance made by a local People's Court at any level, he shall, within five days from the date of receiving the written judgment, have the right to request the People's Procuratorate to present a protest. The People's Procuratorate shall, within five days from the date of receiving the request made by the victim or his legal representative, decide whether to present the protest or not and give him a reply.

Article 183 The time limit for an appeal or a protest against a judgment shall be 10 days and the time limit for an appeal or a protest against an order shall be five days; the time limit shall be counted from the day after the written judgment or order is received.

Article 184 If a defendant, private prosecutor, or a plaintiff or defendant in an incidental civil action files an appeal through the People's Court which originally tried the case, the People's Court shall within three days transfer the petition of appeal together with the case file and the evidence to the People's Court at the next higher level; at the same time it shall deliver duplicates of the petition of appeal to the People's Procuratorate at the same level and to the other party.

If a defendant, private prosecutor, or a plaintiff or defendant in an incidental civil action files an appeal directly to the People's Court of second instance, the People's Court shall within three days transfer the petition of appeal to the People's Court which originally tried the case for delivery to the People's Procuratorate at the same level and to the other party.

Article 185 If a local People's Procuratorate protests against a judgment or order of first instance made by the People's Court at the same level, it shall present a written protest through the People's Court which originally tried the case and send a copy of the written protest to the People's Procuratorate at the next higher level. The People's Court which originally tried the case shall transfer the written protest together with the case file and evidence to the People's Court at the next higher level and shall deliver duplicates of the written protest to the parties.

If the People's Procuratorate at the next higher level considers the protest inappropriate, it may withdraw the protest from the People's Court at the same level and notify the People's Procuratorate at the next lower level.

Article 186 A People's Court of second instance shall conduct a complete review of the facts determined and the application of law in the judgment of first instance and shall not be limited by the scope of appeal or protest.

If an appeal is filed by only some of the defendants in a case of joint crime, the case shall still be reviewed and handled as a whole.

Article 187 A People's Court of second instance shall form a collegial panel and open a court session to hear a case of appeal. However, if after consulting the case file, interrogating the defendant and heeding the opinions of the other parties, defenders and agents ad litem, the

collegial panel thinks the criminal facts are clear, it may open no court session. A People's Court of second instance shall open a court session to hear a case protested by a People's Procuratorate.

When a People's Court of second instance opens a court session to hear a case of appeal or protest, it may do so in the place where the case occurred or in the place where the People's Court which originally tried the case is located.

Article 188 With respect to both cases protested by a People's Procuratorate and cases of public prosecution tried by a People's Court of second instance in a court session, the People's Procuratorate at the same level shall send its procurators to the court. The People's Court of second instance must, 10 days before opening of the court session, notify the People's Procuratorate to examine the case files.

Article 189 After hearing a case of appeal or protest against a judgment of first instance, the People's Court of second instance shall handle it in one of the following manners in light of the different situations:

- (1) if the original judgment was correct in the determination of facts and the application of law and appropriate in the meting out of punishment, the People's Court shall order rejection of the appeal or protest and affirm the original judgment.
- (2) if the original judgment contained no error in the determination of facts but the application of law was incorrect or the punishment was inappropriately meted out, the People's Court shall revise the judgment.
- (3) if the facts in the original judgment were unclear or the evidence insufficient, the People's Court may revise the judgment after ascertaining the facts, or it may rescind the original judgment and remand the case to the People's Court which originally tried it for retrial.

Article 190 In the trial of a case appealed by a defendant, or his legal representative, defender or near relative, the People's Court of second instance may not increase the criminal punishment on the defendant.

The restriction laid down in the preceding paragraph shall not apply to cases protested by a People's Procuratorate or cases appealed by private prosecutors.

Article 191 If a People's Court of second instance discovers that when hearing a case, a People's Court of first instance violates the litigation procedures prescribed by law in one of the following ways, it shall rule to rescind the original judgment and remand the case to the People's Court which originally tried it for retrial:

- (1) violating the provisions of this Law regarding trial in public;
- (2) violating the withdrawal system;
- (3) depriving the parties of their litigation rights prescribed by law or restricting, such rights, which may hamper impartiality of a trial;
- (4) unlawful formation of a judicial organization; or

(5) other violations against the litigation procedures prescribed by law which may hamper impartiality of a trial.

Article 192 The People's Court which originally tried a case shall form a new collegial panel for the case remanded to it for retrial, in accordance with the procedure of first instance. With respect to the judgment rendered after the retrial, an appeal or protest may be lodged in accordance with the provisions of Article 180, 181 or 182 of this Law.

Article 193 After a People's Court of second instance has reviewed an appeal or protest against an order of first instance, it shall order rejection of the appeal or protest or rescind or revise the original order respectively with reference to the provisions of Article 189, 190 or 192 of this Law.

Article 194 The People's Court which originally tried a case shall calculate the time limit anew for the trial of the case remanded to it by the People's Court of second instance from the date of receiving the case remanded.

Article 195 A People's Court of second instance shall try cases of appeal or protest with reference to the procedure of first instance, in addition to applying the provisions in this Chapter.

Article 196 After accepting a case of appeal or protest, a People's Court of second instance shall conclude the trial of the case within one month, or one and a half months at the latest. Under one of the situations provided in Article 126 of this Law, the period may be extended by one month upon the approval or decision by the Higher People's Court of a province, autonomous region or municipality directly under the Central Government. However, with respect to cases of appeal or protest accepted by the Supreme People's Court, the matter shall be decided by the Supreme People's Court itself.

Article 197 All judgments and orders of second instance and all judgments and orders of the Supreme People's Court are final.

Article 198 The public security organs, People's Procuratorates and People's Courts shall have the property, things of value of the criminal suspects and defendants, as well as the fruits accruing therefrom, that they have seized or frozen well kept for examination. No units or individuals shall misappropriate them or dispose of them without authorization. The lawful property of the victims shall be returned to them without delay. Prohibited articles and perishable things shall be disposed of in accordance with the relevant regulations of the State.

Things that serve as tangible evidence shall be transferred together with the case, but for things that are unsuitable to be transferred, their inventory and photos and other documents of certification shall be transferred together with the case.

After a judgment rendered by the People's Court becomes effective, all the seized or frozen illicit money and goods as well as the fruits accruing therefrom, except those that are returned to the victim according to law, shall be confiscated and turned over to the State Treasury.

Any judicial officer who embezzles or misappropriates or disposes of the seized or frozen illicit money and goods as well as the fruits accruing therefrom without authorization shall be

investigated for criminal responsibility according to law; if the offence does not constitute a crime, he shall be given administrative sanction.

#### Chapter IV Procedure for Review of Death Sentences

Article 199 Death sentences shall be subject to approval by the Supreme People's Court.

Article 200 A case of first instance where an Intermediate People's Court has imposed a death sentence and the defendant does not appeal shall be reviewed by a Higher People's Court and submitted to the Supreme People's Court for approval. If the Higher People's Court does not agree with the death sentence, it may bring the case up for trial or remand the case for retrial.

Cases of first instance where a Higher People's Court has imposed a death sentence and the defendant does not appeal, and cases of second instance where a death sentence has been imposed shall all be submitted to the Supreme People's Court for approval.

Article 201 A case where an Intermediate People's Court has imposed a death sentence with a two-year suspension of execution, shall be subject to approval by a Higher People's Court.

Article 202 Reviews by the Supreme People's Court of cases involving death sentences and reviews by a Higher People's Court of cases involving death sentences with a suspension of execution shall be conducted by collegial panels each composed of three judges.

#### Chapter V Procedure for Trial Supervision

Article 203 A party or his legal representative or his near relative may present a petition to a People's Court or a People's Procuratorate regarding a legally effective judgment or order, however, execution of the judgment or order shall not be suspended.

Article 204 If a petition presented by a party or his legal representative or his near relative conforms to any of the following conditions, the People's Court shall retry the case:

- (1) There is new evidence to prove that the confirmation of the facts in the original judgment or order is definitely wrong;
- (2) The evidence upon which the condemnation was made and punishment meted out is unreliable and insufficient, or the major pieces of evidence for supporting the facts of the case contradict each other;
- (3) The application of law in making the original judgment or order is definitely incorrect; or

(4) The judges in trying the case committed acts of embezzlement, bribery, or malpractices for personal gain, or bended the law in making judgment.

Article 205 If the president of a People's Court at any level finds some definite error in a legally effective judgment or order of his court as to the determination of facts or application of law, he shall refer the matter to the judicial committee for handling.

If the Supreme People's Court finds some definite error in a legally effective judgment or order of a People's Court at any lower level, or if a People's Court at a higher level finds some definite error in a legally effective judgment or order of a People's Court at a lower level, it shall have the power to bring the case up for trial itself or may direct a People's Court at a lower level to conduct a retrial.

If the Supreme People's Procuratorate finds some definite error in a legally effective judgment or order of a People's Court at any level, or if a People's Procuratorate at a higher level finds some definite error in a legally effective judgment or order of a People's Court at a lower level, it shall have the power to present a protest to the People's Court at the same level against the judgment or order in accordance with the procedure for trial supervision.

With respect to a case protested by a People's Procuratorate, the People's Court that has accepted the protest shall form a collegial panel for retrial; if the facts, on the basis of which the original judgment was made, are not clear or the evidence is not sufficient, it may direct the People's Court at the lower level to try the case again.

Article 206 A new collegial panel shall be formed for the retrial of a case by a People's Court in accordance with the procedure for trial supervision. If the case was originally one of first instance, it shall be tried in accordance with the procedure of first instance and the new judgment or order may be appealed or protested. If the case was originally one of second instance or was brought up for trial by a People's Court at a higher level, it shall be tried in accordance with the procedure of second instance and the judgment or order rendered shall be final.

Article 207 With respect to a case retried by a People's Court in accordance with the procedure for trial supervision, it shall conclude the trial within three months from the day on which it makes the decision to bring the case up for trial itself or on which the decision is made for it to retry the case. If it is necessary to extend the time limit, the period shall not exceed six months.

The provisions of the preceding paragraph shall apply to the time limit for the trial of a protested case that is accepted by a People's Court and is to be tried by it in accordance with the procedure for trial supervision. Where it is necessary to direct a People's Court at a lower level to try a protested case again, a decision to such an effect shall be made within one month from the day on which the protested case is accepted; the provisions of the preceding paragraph shall apply to the time limit for the trial of the case by the People's Court at the lower level.

## Part Four Execution

Article 208 Judgments and orders shall be executed after they become legally effective.

The following judgments and orders are legally effective:

- (1) judgments and orders against which no appeal or protest has been filed within the legally prescribed time limit;
- (2) judgments and orders of final instance; and
- (3) judgments of the death penalty approved by the Supreme People's Court and judgments of the death penalty with a two-year suspension of execution approved by a Higher People's Court.

Article 209 If a defendant in custody is given the verdict of not guilty or exempted from criminal punishment by a People's Court of first instance, he shall be released immediately after the judgment is pronounced.

Article 210 When a judgment of the death penalty with immediate execution is pronounced or approved by the Supreme People's Court, the President of the Supreme People's Court shall sign and issue an order to execute the death sentence.

If a criminal sentenced to death with a two-year suspension of execution commits no intentional offense during the period of suspension of the sentence and his punishment should therefore be commuted according to law on expiration of such period, the executing organ shall submit a written recommendation to a Higher People's Court for an order; if there is verified evidence that the criminal has committed intentional offense and his death sentence should therefore be executed, the Higher People's Court shall submit the matter to the Supreme People's Court for examination and approval.

Article 211 After receiving an order from the Supreme People's Court to execute a death sentence, the People's Court at a lower level shall cause the sentence to be executed within seven days. However, under one of the following conditions the People's Court at a lower level shall suspend execution and immediately submit a report to the Supreme People's Court for an order:

- (1) If it is discovered before the execution of the sentence that the judgment may contain an error;
- (2) If, before the execution of the sentence, the criminal exposes major criminal facts or renders other significantly meritorious service, thus the sentence may need to be revised; or
- (3) If the criminal is pregnant.

If the reason given in sub-paragraph (1) or (2) of the preceding paragraph which caused the suspension of the sentence has disappeared, the sentence may be executed only after a report is submitted to the President of the Supreme People's Court for him to sign and issue another order for execution of the death sentence. If execution is suspended for the reason given in sub-paragraph (3) of the preceding paragraph, a request shall be submitted to the Supreme People's Court for it to alter the sentence according to law.

Article 212 Before a People's Court causes a death sentence to be executed, it shall notify the People's Procuratorate at the same level to send an officer to supervise the execution.



A death sentence shall be executed by such means as shooting or injection.

A death sentence may be executed on the execution ground or in a designated place of custody.

The judicial officer directing the execution shall verify the identity of the criminal, ask him if he has any last words or letters and then deliver him to the executioner for execution of the death sentence. If it is discovered before the execution that there may be an error, the execution shall be suspended and a report submitted to the Supreme People's Court for an order.

Executions of death sentences shall be announced but shall not be held in public.

After a death sentence is executed, the court clerk on the scene shall prepare a written record of it. The People's Court that caused the death sentence to be executed shall submit a report on the execution to the Supreme People's Court.

After a death sentence is executed, the People's Court that caused the death sentence to be executed shall notify the family members of the criminal.

Article 213 When a criminal is handed over for execution of his criminal punishment, the People's Court that caused the sentence to be executed shall deliver the relevant legal documents to a prison or other executing organ.

A criminal sentenced to death with a two-year suspension of execution, or life imprisonment, or fixed-term imprisonment shall, according to law, be handed over by a public security organ to a prison for execution of his criminal punishment. As to a criminal sentenced to fixed-term imprisonment, if the remaining term of sentence is not more than one year before he is handed over for execution of his criminal punishment, the sentence shall be executed by a detention house instead. As to a criminal sentenced to criminal detention, the sentence shall be executed by a public security organ.

As to a juvenile delinquent, his criminal punishment shall be executed in a reformatory for juvenile delinquents.

An executing organ shall take a criminal into custody without delay and notify the family members of the criminal.

A criminal sentenced to fixed-term imprisonment or criminal detention, upon completion of execution of the sentence, shall be issued a certificate of release by the executing organ.

Article 214 A criminal sentenced to fixed-term imprisonment or criminal detention, under either of the following conditions, may be permitted to temporarily serve his sentence outside prison:

- (1) If the criminal is seriously ill and needs to be released on parole for medical treatment; or
- (2) If the criminal is pregnant or is breast-feeding her own baby.

If a criminal to be released on parole for medical treatment may endanger the community or if a criminal injures himself or makes himself disabled, he may not be released on parole for medical treatment.

If a criminal is truly ill seriously and must be released on parole for medical treatment, a supporting document prepared by the hospital designated by a people's government at the provincial level shall be needed, and the matter shall be subject to examination and approval according to the procedure prescribed by law.

If it is found that a criminal released on parole for medical treatment does not meet the conditions for release on parole for medical treatment or the criminal has gravely violated the regulations regarding such release, he shall be taken back to prison without delay.

As to a criminal sentenced to fixed-term imprisonment or criminal detention who is unable to look after himself in everyday life, if his service of sentence outside prison would not endanger the community, he may be permitted to serve his sentence outside prison temporarily.

If a criminal is permitted to serve his sentence outside prison temporarily, the sentence shall be executed by the public security organ in the place where the criminal resides, the executing organ shall exercise strict control and supervision over him and the grass-roots organizations or the unit where the criminal originally belonged shall assist in supervision.

Article 215 The organ that approved the temporary service of sentence outside prison shall send a copy of its decision on the approval to a People's Procuratorate. If the People's Procuratorate considers the temporary service of sentence outside prison improper, it shall within one month from the date of receiving the notification, submit its recommendation in writing to the organ that approved the temporary service of sentence outside prison, which shall, upon receiving the written recommendation of the People's Procuratorate, reexamine its decision without delay.

Article 216 As soon as the conditions under which a criminal is permitted to serve his sentence outside prison temporarily cease to exist, if the criminal's term of sentence has not expired, he shall be taken back to prison without delay.

If a criminal dies during the period in which he is serving his sentence outside prison temporarily, the prison shall be informed thereof without delay.

Article 217 A criminal who has been sentenced to imprisonment with a suspension of execution shall be placed by the public security organ under the observation of his unit or a grass-roots organization.

A criminal released on parole shall be supervised by a public security organ during the test period of parole.

Article 218 Sentence of public surveillance or deprivation of political rights that has been imposed on a criminal shall be executed by a public security organ. After the sentence is served, the executing organ shall notify the criminal himself and publicly announce to the people concerned that public surveillance is ended or that his political rights are restored.

Article 219 If a criminal sentenced to a fine fails to pay the fine within the time limit, the People's Court shall compel him to pay. If he has true difficulty in paying because he has suffered an irresistible disaster, an order may be made to reduce the fine or exempt him from payment.

Article 220 All judgments on confiscation of property, whether imposed as a supplementary punishment or independently, shall be executed by the People's Courts; when necessary, the People's Courts may execute such judgments jointly with the public security organs.

Article 221 If a criminal commits a crime again while serving his sentence, or if a criminal act that is discovered was not known at the time of judgment, he shall be transferred by the executing organ to a People's Procuratorate for handling.

If a criminal sentenced to public surveillance, criminal detention, fixed-term imprisonment or life imprisonment shows true repentance or renders meritorious service while serving his sentence and should be granted a commutation of sentence or be released on parole according to law, the executing organ shall submit a written recommendation to a People's Court for examination and an order.

Article 222 If a People's Procuratorate considers that the order on commutation of sentence or on parole made by a People's Court is improper, it shall, within 20 days from the date of receiving a copy of the written order, submit a written recommendation to the People's Court for correction. The People's Court shall, within one month from the date of receiving the recommendation, form a new collegial panel to handle the case and render a final order.

Article 223 If, during execution of a criminal punishment, the prison or any other executing organ believes that there is an error in the judgment or the criminal lodges a petition, it shall refer the matter to the People's Procuratorate or the People's Court that pronounced the original judgment for handling.

Article 224 The People's Procuratorates shall supervise the execution of criminal punishments by executing organs to see if the execution conforms to law. If they discover any illegalities, they shall notify the executing organs to correct them.

#### Supplementary Provisions

Article 225 The security departments of the Army shall exercise the power of investigation with respect to criminal offences that have occurred in the Army.

Crimes committed by criminals in prison shall be investigated by the prison.

The handling of criminal cases by the security departments of the Army and by prisons shall be governed by the relevant provisions of this Law.

# **Special Maritime Procedure Law of the People's Republic of China**

Adopted at the 13th Meeting of the Standing Committee of the Ninth National People's Congress on December 25, 1999 and promulgated by Order No. 28 of the President of the People's Republic of China on December 25, 1999

## Contents

Chapter I General Principles

Chapter II Jurisdiction

Chapter III Preservation of Maritime Claims

Section 1 General Provisions

Section 2 Arrest and Auction of Ships

Section 3 Attachment and Auction of Cargo Carried by Ships

Chapter IV Maritime Injunction

Chapter V Preservation of Maritime Evidence

Chapter VI Maritime Security

Chapter VII Service

Chapter VIII Trial Procedures

Section 1 Provisions for Trial of Collision Cases

Section 2 Provisions for Trial of General Average Cases

Section 3 Provisions for Exercising the Right of Subrogation by Marine Insurers

Section 4 Summary Procedure, Procedure for Hastening Debt Recovery and Procedure for Public Exigence

Chapter IX Procedure for Constitution of Limitation Fund for Maritime Claims

Chapter X Procedure for Registration and Repayment of Debt

Chapter XI Procedure for Exigence of Maritime Liens

Chapter XII Supplementary Provisions

Chapter I General Principles

Article 1 This Law is enacted with a view to safeguarding the rights to litigation of the parties to maritime cases and ensuring that the people's courts shall ascertain the facts, establish the liabilities, properly apply the laws and promptly hear and determine maritime cases.

Article 2 The Civil Procedure Law of the People's Republic of China and this Law shall be applicable to maritime actions brought in the People's Republic of China. Where the provisions of this Law are applicable, they shall prevail.

Article 3 Where any provisions concerning foreign-related maritime actions contained in international conventions entered into or acceded to by the People's Republic of China are different from those contained in the Civil Procedure Law of the People's Republic of China and in this Law, the provisions of such international conventions shall apply, except those on which the People's Republic of China has announced reservation.

Article 4 The maritime courts shall entertain actions brought by the parties in respect of maritime tort, disputes over maritime contracts and other maritime disputes as provided for by law.

Article 5 In hearing and determining maritime cases, the maritime courts, the higher people's courts of the places where such maritime courts are located and the Supreme People's Court shall apply this Law.

## Chapter II Jurisdiction

Article 6 The relevant provisions of the Civil Procedure Law of the People's Republic of China shall apply to territorial jurisdiction of maritime actions.

The territorial jurisdiction of the maritime actions listed hereunder shall be determined as follows:

- (1) apart from jurisdiction exercised in accordance with the provisions of Articles 29 to 31 in the Civil Procedure Law of the People's Republic of China, an action brought for maritime tort may also be under the jurisdiction of the maritime court of the place where the ship's port of registry is located;
- (2) apart from jurisdiction exercised in accordance with the provisions of Article 28 in the Civil Procedure Law of the People's Republic of China, an action arising from a dispute over a contract for carriage by sea may also be under the jurisdiction of the maritime court of the place where the port of transshipment is located;
- (3) an action arising from a charter-party dispute of a seagoing ship shall be under the jurisdiction of the maritime court of the place where the port of delivery, the port of re-delivery, the ship's port of registry and the domicile of the defendant is located;

(4) an action arising from a dispute over a protection and indemnity contract shall be under the jurisdiction of the maritime court of the place where the subject-matter of insurance is located, where the accident occurred or where the domicile of the defendant is located;

(5) an action arising from a dispute over the service contract of the crew of a sea-going ship shall be under the jurisdiction of the maritime court of the place where the domicile of the plaintiff is located, where the contract is signed, where the port of embarkation or disembarkation of the ship's crew is located, or where the domicile of the defendant is located;

(6) an action arising from a dispute over maritime security shall be under the jurisdiction of the maritime court of the place where collateral is located or where the domicile of the defendant is located; an action arising from a dispute over ship mortgage may also be under the jurisdiction of the maritime court of the place where the ship's port of registry is located;

(7) an action arising from a dispute over the ownership, possession, employment and maritime lien of a sea-going ship shall be under the jurisdiction of the maritime court of the place where the ship is located, where the ship's port of registry is located, or where the domicile of the defendant is located.

Article 7 The following maritime actions shall be under the exclusive jurisdiction of maritime courts specified in this Article respectively:

(1) an action arising from a dispute over coastal port operation shall be under the jurisdiction of the maritime court of the place where the port is located;

(2) an action brought against pollution damage to sea areas caused by discharge, spill or dumping of oil or other hazardous substances from ships, by production or operation at sea or by ship demolition or repair shall be under the jurisdiction of the maritime courts of the place where the pollution occurred, the place that is suffering from the harmful consequences or the place where pollution prevention measures were taken; and

(3) an action arising from a dispute over an offshore exploration and exploitation contract performed within the territory of the People's Republic of China or in the sea area under the jurisdiction of the People's Republic of China shall be under the jurisdiction of the maritime court of the place where the contract is being performed .

Article 8 Where all the parties to a maritime dispute are aliens, stateless persons, foreign enterprises or organizations and have agreed in writing to be subject to the jurisdiction of a maritime court of the People's Republic of China, notwithstanding that the place that is actually related to the dispute is not within the territory of the People's Republic of China, the said maritime court of the People's Republic of China shall have jurisdiction of the dispute.

Article 9 Any party who wishes to apply for a positive decision that certain property at sea is ownerless shall file an application with the maritime court of the place where the said property is located; anyone who wishes to apply for a declaration that a person is dead in an accident at sea shall file an application with the maritime court of the place where the competent authority

dealing with the accident is located or with the maritime court that entertains the relevant maritime case.

Article 10 Any controversy that arises between a maritime court and a local people's court over jurisdiction shall be resolved by the two courts through consultation; if consultation fails, the matter shall be submitted to their common superior people's court for designation of jurisdiction.

Article 11 Any party who wishes to apply for the enforcement of a maritime arbitration award, the recognition and enforcement of a judgment or order of a foreign court or a foreign maritime arbitration award shall file an application with the maritime court of the place where the property against which enforcement is sought or the domicile of the person against whom enforcement is sought is located. In the absence of a maritime court at the said place, the application shall be filed with the intermediate people's court of the place where the property against which enforcement is sought or the domicile of the person against whom enforcement is sought is located.

### Chapter III Preservation of Maritime Claims

#### Section I General Provisions

Article 12 Preservation of maritime claims means the compulsory measures taken by a maritime court on the application of a maritime claimant against the property of the person against whom a claim is made, for the purpose of ensuring fulfillment of the claim of the maritime claimant.

Article 13 Any party who wishes to apply for preservation of a maritime claim before instituting an action shall file an application with the maritime court of the place where the property subject to preservation is located.

Article 14 Preservation of a maritime claim shall not be bound by the jurisdiction agreement or arbitration agreement reached between the parties to an action in respect of the maritime claim.

Article 15 A maritime claimant who wishes to apply for preservation of a maritime claim shall file an application in writing with a maritime court. In the application the particulars of the maritime claim, reasons for the application, subject-matter to be preserved and the amount of security required shall be specified with relevant evidence attached.

Article 16 The maritime court, having entertained an application for preservation of a maritime claim, may enjoin the maritime claimant to provide security. If the maritime claimant fails to do so, the court shall reject the application.

Article 17 The maritime court, having accepted an application, shall make an order within 48 hours. Where the order involves adoption of measures for preservation of the maritime claim, it shall be executed forthwith; where the conditions for the preservation of the maritime claim are not met, it shall make an order to reject the application.

Any party who is dissatisfied with such an order may, within 5 days after receipt thereof, apply for review not more than once. The maritime court shall give the result of the review within 5 days after receipt of the application therefor. Execution of the order shall not be suspended during the period of review.

Where preservation of a maritime claim is objected by an interested person, the maritime court, having examined the objection and considering the reasons justified, shall discharge preservation against his property.

Article 18 Where a person against whom a claim is made provides security or a party applies for discharge of preservation of the maritime claim on justified grounds, the maritime court shall discharge the preservation promptly.

If within the time limit prescribed by this Law a maritime claimant fails to bring an action or apply for arbitration in accordance with an arbitration agreement, the maritime court shall discharge the preservation or return the security promptly.

Article 19 Where legal proceedings or arbitral proceedings are not commenced in respect of a maritime dispute after execution of the preservation of a maritime claim, any party may bring an action in respect of the maritime claim in the maritime court that adopts measures for preservation of the maritime claim or another maritime court that has jurisdiction, unless a jurisdiction agreement or arbitration agreement has been reached between the parties.

Article 20 A maritime claimant who has wrongly applied for preservation of a maritime claim shall indemnify the person against whom the claim is made or the interested person for the losses thus incurred.

## Section II Arrest and Auction of Ships

Article 21 With respect to the following maritime claims, an application may be made for the arrest of a ship:

- (1) loss of or damage to property caused by ship operation;
- (2) loss of life or personal injury in direct connection with ship operation;
- (3) salvage at sea;
- (4) damage or threat of damage caused by ship to environment, coast or relevant interested persons; measures adopted to prevent, diminish or eliminate such damage; compensation paid for such damage; expenses for reasonable measures actually adopted or to be adopted to restore environment; losses caused by such damage to or likely to a third party; and damage, expenses or losses of a similar nature as those specified in this subparagraph;
- (5) expenses related to re-floating, removal, reclamation or destroying of a sunken ship, wreck, aground ship, abandoned ship or to making them harmless, including the expenses related to re-floating, removal, reclamation or destroying of the things which have or no longer remained on board the ship or to making them harmless and expenses related to maintaining of an abandoned ship and her crew;



- (6) agreement in respect of employment or charting of a ship;
- (7) agreement in respect of carriage of goods or passengers;
- (8) cargo (including luggage) carried by a ship or loss or damage relating thereto;
- (9) general average;
- (10) towage;
- (11) pilotage;
- (12) providing of supplies or rendering of services in respect of ship operation, management, maintenance or repair;
- (13) construction, re-construction, repair, refurbishment or equipment of a ship;
- (14) dues or expenses for ports, canals, docks, harbours or other waterways;
- (15) crew's wages and other moneys, including repatriation expenses and social insurance premium payable for the crew;
- (16) expenses paid for a ship or a ship-owner;
- (17) insurance premium for a ship (including protection and indemnity calls) payable by or paid for a ship-owner or bareboat charterer;
- (18) commission, brokerage or agency fee related to ships payable by or paid for a ship-owner or bareboat charterer;
- (19) a dispute over ownership or possession of a ship;
- (20) a dispute between joint owners of a ship over the employment or earnings of the ship;
- (21) ship mortgage or rights of a similar nature; and
- (22) a dispute arising out of a ship sale contract.

Article 22 No application may be made for the arrest of a ship on account of maritime claims other than the ones specified in Article 21 of this Law, except for the enforcement of a judgment, an arbitration award or other legal documents.

Article 23 The maritime court may arrest the ship concerned in any of the following circumstances:

- (1) the ship-owner is liable for the maritime claim and is the owner of the ship at the time of arrest;
- (2) the bareboat charterer of the ship is liable for the maritime claim and is the bareboat charterer or owner of the ship at the time of arrest;
- (3) a maritime claim that gives rise to ship mortgage or to rights of a similar nature;
- (4) a maritime claim related to ownership or possession of a ship; and

(5) a maritime claim that gives rise to maritime lien.

The maritime court may arrest other ships owned, at the time of arrest, by the ship-owner, bareboat charterer, time charterer or voyage charterer who is liable for the maritime claim, except for claims related to ownership or possession of a ship.

No ships engaged in military or governmental services may be subject to arrest.

Article 24 No maritime claimant may, on account of the same maritime claim, apply for arrest of a ship which was once arrested, except in any of the following circumstances:

- (1) the person against whom the claim is made fails to provide sufficient security;
- (2) it is likely that the surety cannot perform the obligations under the security in full or in part; or
- (3) the maritime claimant agrees, on reasonable grounds, to release the arrested ship or to return the security provided; or the maritime claimant cannot, by reasonable means, stop the release of the arrested ship or the return of the security provided.

Article 25 A maritime claimant who wishes to apply for arrest of the ship concerned but cannot promptly ascertain the name of the person against whom the claim is made may still apply for its arrest.

Article 26 While the maritime court issues an order for arresting of a ship, it may send a notice to relevant departments for assistance in execution of the order. In the notice shall be stated the scope and specific tasks of the assistance in execution of the order, and the relevant departments have the obligation to assist in the execution. When the maritime court deems it necessary, it may directly send officers to go aboard for purposes of supervision.

Article 27 After ordering to preserve a ship, the maritime court may, with the consent of the maritime claimant, allow continued operation of the ship by means of restraining disposition or mortgaging of the ship.

Article 28 The time limit for ship arrest in preservation of a maritime claim is 30 days.

Where a maritime claimant brings an action or applies for arbitration within the 30 days, or where a maritime claimant applies for arrest of a ship in the process of a legal action or arbitration, arrest of the ship is not subject to the time limit prescribed in the preceding paragraph.

Article 29 Where on the expiry of the time limit for ship arrest, a person against whom a claim is made fails to provide security and it is not appropriate to keep the ship under arrest, the maritime claimant, having brought an action or applied for arbitration, may apply to the maritime court ordering the ship arrest for auction of the ship.

Article 30 The maritime court shall, after receipt of an application for auction of a ship, examine the application and make an order to allow or disallow the auction.

Any party who is dissatisfied with such an order may, within 5 days after receipt thereof, apply for review not more than once. The maritime court shall, within 5 days after receipt of the application

therefor, give the result of the review. During the period of review, execution of the order shall be suspended.

Article 31 Where a maritime claimant, having applied for auction of a ship, applies for termination of the auction, the maritime court shall make an order to approve or disapprove the application. If the maritime court makes an order to terminate the auction of the ship, the expenses incurred in preparation for auction of the ship shall be borne by the maritime claimant.

Article 32 The maritime court which orders auction of a ship shall issue an announcement in newspapers or other news media. In the case of auction of a foreign ship, such announcement shall be issued in the newspapers or other news media of overseas distribution.

Such announcement shall contain:

- (1) name and nationality of the ship for auction;
- (2) reasons and grounds for auction of the ship;
- (3) composition of the ship auction committee;
- (4) time and venue of the ship auction;
- (5) time and venue for display of the ship for auction;
- (6) formalities to be completed for taking part in bidding;
- (7) particulars necessary for registration of debts; and
- (8) other matters which need to be announced.

The period of announcement for ship auction shall be not less than 30 days.

Article 33 The maritime court shall, 30 days before an auction of a ship, issue a notice to the ship registrar of the state of registry of the ship for auction and to the maritime lien holder, mortgagee and ship-owner already known.

Such notice shall contain the name of the ship for auction, time and venue of the ship auction, reasons and grounds for the ship auction, registration of debts, etc.

Such notice shall be despatched in written form or by other appropriate means where the receipt thereof can be confirmed.

Article 34 A ship auction shall be conducted by a ship auction committee. A ship auction committee shall consist of three or five persons, including the person of the maritime court in charge of execution designated by the court, the auctioneer and ship surveyor invited by the maritime court.

The ship auction committee shall arrange the assessment and evaluation of the ship; arrange and preside over the auction; sign auction confirmation with the bidder; and complete ship delivery formalities.

The ship auction committee is responsible to and under the supervision of the maritime court.

Article 35 Bidders shall register with the ship auction committee within the prescribed time limit. At the time of registration, certificates of identification of the person who registers with the committee, the legal representative of the enterprise or the leading official of other organization, and the power of attorney of the authorized proxy shall be submitted for examination and a certain amount of bidding deposit shall be paid.

Article 36 The ship auction committee shall, before auction of a ship, display the ship for auction and make the ship available for inspection and provide information about the ship.

Article 37 A buyer, having signed the auction confirmation, shall pay forthwith not less than 20% of the purchase price, and the balance shall be paid within seven days after the date of the purchase, unless the ship auction committee has agreed otherwise with the buyer.

Article 38 When a buyer has paid the purchase price in full, the ship-owner shall, within the designated time limit, deliver to the buyer the ship as is at the berthing place. The ship auction committee shall arrange and supervise the delivery of the ship and sign the letter of confirmation of delivery and acceptance with the buyer after delivery of the ship.

After delivery of the ship, the maritime court shall issue an order to release the ship.

Article 39 When a ship is delivered, the maritime court shall issue an announcement in newspapers or other news media stating that the ship has been sold by auction and delivered to the buyer.

Article 40 A buyer, having taken delivery of the ship, shall by virtue of the auction confirmation and other relevant documents, complete the formalities of registration with the ship registrar in respect of ownership of the ship. The former ship-owner shall cancel the registration with the previous ship registrar in respect of ownership of the ship. Ownership of the ship is transferred notwithstanding that the former ship-owner fails to cancel such registration.

Article 41 An auction is void if there is malicious collusion between the bidders. The bidders who take part in malicious collusion shall be liable for the expenses of the ship auction and make good the relevant losses. The maritime court may impose on the bidders who takes part in malicious collusion a fine of not less than 10% but not more than 30% of the highest bidding.

Article 42 In addition to the provisions of this Section, the relevant provisions of the Auction Law of the People's Republic of China shall apply to auction.

Article 43 Where a ship under arrest is to be auctioned for satisfaction of debts during the process of the procedure for execution, the relevant provisions of this Section may be applied *mutatis mutandis*.

### Section III Attachment and Auction of Cargo Carried By Ships

Article 44 A maritime claimant may apply for attachment of the cargo carried by a ship to ensure fulfillment of his maritime claim.

The cargo against which an attachment is applied for shall be that owned by the person against whom the claim is made.

Article 45 The value of the cargo against which an attachment is applied for by a maritime claimant shall be equal to the amount of his claim.

Article 46 The time limit for attachment of the cargo carried by a ship for preservation of a maritime claim is 15 days.

Where within the 15 days a maritime claimant brings an action or applies for arbitration or, in the process of legal action or arbitration, applies for attachment of the cargo carried by a ship, attachment of the cargo carried by the ship is not subject to the time limit prescribed in the preceding paragraph.

Article 47 Where on the expiry of the time limit for cargo attachment, the person against whom a claim is made fails to provide security and it is not appropriate to keep the cargo under attachment, the maritime claimant, having brought an action or applied for arbitration, may apply to the maritime court ordering the attachment of the cargo carried by the ship for auction of the cargo.

Where the cargo cannot be preserved or is difficult to preserve, or the expenses for its preservation are likely to exceed its value, a maritime claimant may apply for an earlier auction.

Article 48 The maritime court shall, after receipt of an application for auction of the cargo carried by a ship, examine the application and, within 7 days, make an order to allow or disallow the auction.

Any party who is dissatisfied with such an order may, within five days after receipt thereof, apply for review not more than once. The maritime court shall, within five days after receipt of the application therefor, give the result of the review. During the period of review, execution of the order shall be suspended.

Article 49 Auction of the cargo carried by a ship shall be conducted by an auction committee composed of the person of the maritime court in charge of execution designated by the court and the auctioneer invited by the maritime court, or conducted by an organization entrusted by the maritime court.

Where there are no provisions in this Section to govern certain auction of the cargo carried by a ship, the provisions of Section 2 of this Chapter regarding auction of ships may be applied *mutatis mutandis*

Article 50 Where a maritime claimant applies for preservation of a maritime claim in respect of a ship's bunkers and provisions related to the claim, the provisions of this Section shall apply.

#### Chapter IV Maritime Injunction

Article 51 A maritime injunction means the compulsory measures adopted on the application of a maritime claimant by the maritime court to compel the person against whom a claim is made to do or not to do certain things, so as to prevent the lawful rights and interest of the claimant from being infringed upon.

Article 52 A party who wishes to apply for a maritime injunction before bringing an action shall file an application with the maritime court of the place where the maritime dispute arose.

Article 53 A maritime injunction shall not be bound by the jurisdiction agreement or arbitration agreement reached between the parties in respect of the maritime claim.

Article 54 A maritime claimant who wishes to apply for a maritime injunction shall file an application in writing with the maritime court. In the application shall be stated the reasons therefor, with relevant evidence attached.

Article 55 The maritime court, having entertained an application for a maritime injunction, may enjoin the maritime claimant to provide security. Where the maritime claimant fails to do so, It shall reject the application.

Article 56 The following conditions shall be met before a maritime injunction is granted:

- (1) the claimant has a specific maritime claim;
- (2) a breach of legal provisions or contractual provisions by the person against whom a claim is made needs to be redressed; and
- (3) in a situation of emergency, losses will be caused or will become worse if a maritime injunction is not granted forthwith.

Article 57 The maritime court, having accepted an application, shall make an order within 48 hours. Where the order grants a maritime injunction, it shall be executed forthwith; where the conditions for a maritime injunction are not met, it shall make an order to reject the application.

Article 58 A party who is dissatisfied with an order may, within five days after receipt thereof, apply for review not more than once. The maritime court shall, within five days after receipt of the application therefor, give the result of the review. Execution of the order shall not be suspended during the period of review.

Where a maritime injunction is objected by an interested person, the maritime court, having examined the objection and considering the reasons therefor justified, shall cancel the maritime injunction.

Article 59 Where a person against whom a claim is made refuses to comply with the maritime injunction, the maritime court may, according to the seriousness of the case, impose a fine or put him under detention; if his act constitutes a crime, criminal liability shall be investigated in accordance with law.

A fine imposed upon an individual shall be not less than RMB 1,000 yuan but not more than RMB 30,000 yuan. A fine imposed upon a unit shall be not less than RMB 30,000 yuan but not more than RMB 100,000 yuan.

The detention period shall be not more than 15 days.

Article 60 A maritime claimant who has wrongly applied for a maritime injunction shall indemnify the person against whom the claim is made or the interested person for the losses thus incurred.

Article 61 Where legal proceedings or arbitral proceedings are not commenced in respect of a maritime dispute after execution of the maritime injunction, any party may bring an action in respect of the maritime claim in the maritime court granting the maritime injunction or in another maritime court having jurisdiction, unless a jurisdiction agreement or arbitration agreement has been concluded between the parties.

## Chapter V Preservation of Maritime Evidence

Article 62 Preservation of maritime evidence means the compulsory measures adopted, on the application of a maritime claimant, by the maritime court to take, preserve or seal up the evidence related to a maritime claim.

Article 63 A party who wishes to apply for preservation of maritime evidence before instituting an action shall file an application with the maritime court of the place where the evidence is to be preserved.

Article 64 Preservation of maritime evidence shall not be bound by the jurisdiction agreement or arbitration agreement reached between the parties in respect of the maritime claim.

Article 65 A maritime claimant who wishes to apply for preservation of maritime evidence shall file an application in writing with the maritime court. In the application shall be stated the evidence to be preserved, the connection of the evidence with the maritime claim and the reasons therefor.

Article 66 The maritime court, having entertained an application for preservation of maritime evidence, may enjoin the maritime claimant to provide security. When the maritime claimant fails to do so, it shall reject the application.

Article 67 The following conditions shall be met before preservation of maritime evidence is granted:

- (1) the applicant is a party to the maritime claim;
- (2) the evidence, preservation of which is requested, substantiates the maritime claim;
- (3) the person against whom the application is made is a party relevant to the evidence, preservation of which is requested; and

(4) in a situation of emergency, the evidence relevant to the maritime claim might be lost or hard to obtain, unless the evidence is immediately preserved.

Article 68 The maritime court, having accepted an application, shall make an order within 48 hours. Where the order involves adoption of measures for preservation of the maritime evidence, it shall be executed forthwith; where the conditions for preservation of the maritime evidence are not met, the court shall make an order to reject the application.

Article 69 A party who is dissatisfied with the order may, within five days after receipt thereof, apply for review not more than once. The maritime court shall, within five days after receipt of the application therefor, give the result of the review. Execution of the order shall not be suspended during the period of review. If the reasons given by the person against whom a claim is made are justified, the evidence under preservation shall be returned to that person.

Where preservation of the maritime evidence is objected by an interested person, the maritime court, having examined the objection and considering the reasons therefor justified, shall make an order to cancel preservation of the maritime evidence.

Article 70 To preserve maritime evidence, the maritime court may, taking into account the specific circumstances, seal up the evidence, or take the reproductions, duplicates, photographs, or make video recording, extracts or records of inquests. It may also take the original evidence where definitely necessary.

Article 71 A maritime claimant who has wrongly applied for preservation of maritime evidence shall indemnify the person against whom the claim is made or the interested person for the losses thus incurred.

Article 72 Where legal proceedings or arbitral proceedings are not commenced in respect of a maritime dispute after preservation of the maritime evidence, any party may bring an action in respect of the maritime claim in the maritime court that adopts the measures for preservation of the evidence or another maritime court that has jurisdiction, unless a jurisdiction agreement or arbitration agreement has been concluded between the parties.

## Chapter VI Maritime Security

Article 73 Maritime security consists of securities involved in such procedures as preservation of maritime claims, maritime injunction and preservation of maritime evidence provided for in this Law.

The types of security include cash, guarantee, mortgage or pledge.

Article 74 The security of a maritime claimant shall be submitted to the maritime court; the security of a person against whom a claim is made may be submitted to the maritime court or the maritime claimant.



Article 75 The type and amount of the security provided by a maritime claimant shall be determined by the maritime court. The type and amount of the security provided by a person against whom the claim is made shall be determined through consultation by the maritime claimant and the person against whom the claim is made; if consultation fails, the matter shall be determined by the maritime court.

Article 76 The amount of the security requested for preservation of a maritime claim by a maritime claimant from a person against whom the claim is made shall be equal to the amount of his credit, but shall not exceed the value of the property preserved.

The amount of the security provided by a maritime claimant shall be equal to the loss the person against whom the claim is made may suffer as a result of his application. The exact amount shall be determined by the maritime court.

Article 77 After providing security, the provider may apply to the maritime court for reduction, alteration or cancellation of such security, if he has good reasons to do so.

Article 78 If the amount of the security requested by the maritime claimant is so excessive as to cause losses to the person against whom the claim is made, the maritime claimant shall bear the liability to compensate for the losses.

Article 79 The provisions of this Chapter may apply mutatis mutandis to securities involved in the procedures such as constitution of maritime limitation fund and advance execution.

## Chapter VII Service

Article 80 The service of legal documents in maritime actions is governed by the relevant provisions of the Civil Procedure Law of the People's Republic of China and may also be conducted in the following ways:

- (1) on the agent ad litem duly entrusted by the person on whom the document is to be served;
- (2) on the representative office or branch established in the People's Republic of China by the person on whom the document is to be served, or on the business agent appointed by the person on whom the document is to be served ; or
- (3) in other appropriate ways whereby such service can be acknowledged.

The legal documents in respect of arrest of a ship may be served on the master of the ship concerned.

Article 81 Where a person who is under an obligation to accept legal documents refuses to acknowledge the receipt thereof, the server shall make a record on the receipt of service of the fact and, having the receipt of service signed or sealed by the server and the witness, leave the legal

documents in the domicile or on the business premises of the person on whom the documents are to be served, in which case the service shall be deemed to be completed.

## Chapter XIII Trial Procedure

### Section 1 Provisions for Trial of Collision Cases

Article 82 Both the plaintiff and the defendant shall fill in the Investigation Form for Maritime Accident truthfully at the time of bringing an action and of submitting defence respectively.

Article 83 No evidential documents shall be attached to the bill of complaint or the bill of defence served by the maritime court on the parties.

Article 84 The burden of proof shall be discharged by the parties before a court hearing. After the parties have discharged their burden of proof and furnished the maritime court with the statement to this effect, they may apply to consult the evidential documents concerning the ship collision.

Article 85 The parties may not reverse the statement previously made in the Investigation Form for Maritime Accident or the evidence adduced in discharging the burden of proof, unless new evidence has come to light and there is good reason for being unable to submit such new evidence within the period for producing evidence.

Article 86 The survey and appraisal of a ship shall be conducted by institutions or individual with due authorization of the State or by professionally qualified institutions or individuals. The maritime court shall not accept any conclusion of the survey or appraisal made or drawn up by institutions or individuals without authorization of the State or without professional qualifications.

Article 87 A case of ship collision shall be tried and concluded by the maritime court within one year after filing of the case. Where an extension of the period is necessary under special circumstances, it shall be subject to approval by the president of the court.

### Section 2 Provisions for Trial of General Average Cases

Article 88 With respect to general average, the parties may either mutually agree to entrust average adjusters with the adjustment, or directly bring an action in a maritime court. In dealing with an unadjusted average dispute, the maritime court may entrust average adjusters with the adjustment.

Article 89 The general average statement made by average adjusters may be admissible as the proper basis for contribution if no objection is raised by any of the parties; otherwise, the maritime court shall decide whether to accept the statement or not.

Article 90 A party may bring an action against the liable person for non-general average losses without being prejudiced by the proceedings commenced for the general average claim arising from the same maritime accident.

Article 91 Actions brought by the parties in respect of the same maritime accident for non-general average losses and for general average contribution by recourse claim against the liable person in the maritime court that entertains the general average case can be consolidated by the same court.

Article 92 A case of general average shall be tried and concluded by a maritime court within one year after filing of the case. Where an extension of the period is necessary under special circumstances, it shall be subject to approval by the president of the court.

### Section 3 Provisions for Exercising Right of Subrogation by Marine Insurers

Article 93 Where an accident covered was caused by a third party and the insurer has indemnified the insured, the insurer is entitled to claim compensation against the third party by exercising the right of subrogation up to the amount of the indemnity paid.

Article 94 In exercising the right of subrogation, an insurer shall, bring an action in its own name against the third party that caused the accident covered, if no action has been brought by the insured against that third party.

Article 95 In exercising the right of subrogation, an insurer may apply to the court entertaining the case for an alteration of the party to the lawsuit and subrogate the rights of the insured against the third party that caused the accident covered, if an action has been brought by the insured against that third party.

Where the losses of the insured caused by a third party cannot be fully covered by insurance indemnity, the insurer and the insured may act as co-plaintiffs to claim compensation against the third party.

Article 96 Where an action is brought or an application for participating in the action is filed by an insurer pursuant to the provisions provided for in Articles 94 and 95 of this Law, the insurer shall submit to the maritime court that entertains the case the certificate evidencing payment of indemnity by the insurer and other documents necessary for participating in the action.

Article 97 An aggrieved party may claim for oil pollution damage caused by a ship either against the owner of the ship causing oil pollution damage or directly against the insurer who is answerable for the liabilities of the owner of the ship causing oil pollution damage, or against the person who provides financial security therefor.

Where the insurer for oil pollution damage or the person who provides financial security therefor is sued in an action, such insurer or person is entitled to demand the owner of the ship causing oil pollution damage to join the proceedings.

### Section 4 Summary Procedure, Procedure for Hastening Debt Recovery and Procedure for Public Exigence

Article 98 In hearing simple maritime cases in which the facts are evident, the rights and obligations are clear and the dispute is a minor one, the maritime court may apply the provisions governing summary procedure in the Civil Procedure Law of the People's Republic of China.

Article 99 Where a creditor, on the basis of a maritime-related matter, requests a debtor to pay a debt in cash or in securities, if it is found to be in conformity with the relevant provisions in the Civil Procedure Law of the People's Republic of China, the creditor may apply to the maritime court that has jurisdiction for an order of payment.

Where the debtor is an alien, a stateless person or a foreign enterprise or organization that has a domicile or representative office or branch within the territory of the People's Republic of China on which the order of payment can be served, the creditor may apply to the maritime court that has jurisdiction for an order of payment.

Article 100 A holder of a bill of lading or similar documents for taking delivery of cargo may apply for public exigence to the maritime court of the place where the cargo is located in case such documents are out of control or lost.

## Chapter IX Procedure for Constitution of Limitation Fund for Maritime Claims

Article 101 After the occurrence of a marine accident, the ship-owner, charterer, operator, salvor or insurer, who wishes to apply for liability limitation in accordance with law, may apply to a maritime court for constitution of the limitation fund for maritime claims.

In the event of oil pollution damage caused by a ship, the ship-owner and the insurer or the person who provides financial security therefor shall, for the purpose of obtaining the right of liability limitation provided for by law, constitute with the maritime court a limitation fund for maritime claims in respect of oil pollution damage.

Constitution of limitation fund may be applied for either before an action is brought or during the process of legal proceedings, or, at the latest, before the judgement of first instance is given.

Article 102 A party who wishes to apply for constitution of a limitation fund for maritime claims before an action is brought shall file an application therefor with the maritime court of the place where the accident occurred, the contract is performed or the ship is under arrest.

Article 103 Constitution of a limitation fund for maritime claims shall not be bound by the jurisdiction agreement or arbitration agreement reached between the parties.

Article 104 A person who wishes to apply for constitution of a limitation fund for maritime claims shall file an application in writing with a maritime court. In the application shall be stated the amount of the limitation fund to be constituted for maritime claims, the reasons therefor as well as the names, addresses and means of correspondence of the interested persons already known, with relevant evidence attached.

Article 105 The maritime court shall, within seven days of the acceptance of an application for constitution of a limitation fund for maritime claims, notify all the interested persons already known and issue an announcement of the same in the newspapers or other news media.

Such notice and announcement shall contain:

- (1) name of the applicant;
- (2) facts and reasons for application;
- (3) particulars for constitution of the limitation fund for maritime claims;
- (4) particulars necessary in registration of claims; and
- (5) other matters which need to be announced.

Article 106 Any interested person who objects to the application filed by the applicant for constitution of a limitation fund for maritime claims shall file in writing with the maritime court within seven days from the date of receipt of the notice, or within 30 days from the date of the announcement if no notice is received.

The maritime court, having received the written objection filed by an interested person, shall examine the objection and make an order within 15 days. If the objection is well founded, it shall make an order to reject the application of the applicant. Otherwise, it shall make an order to allow the applicant to constitute a limitation fund for maritime claims.

The party who is dissatisfied with such an order may appeal within seven days from the date of receipt thereof. The people's court of second instance shall make an order within 15 days from the date of receipt of the appeal.

Article 107 Where no objection is raised by an interested person within the prescribed time limit, the maritime court shall make an order to allow the applicant to constitute a limitation fund for maritime claims.

Article 108 After the order to allow the applicant to constitute a limitation fund for maritime claims becomes effective, the applicant shall constitute the fund with the maritime court.

A limitation fund for maritime claims may be constituted either by depositing cash or by providing security acceptable to the maritime court.

The sum of the limitation fund for maritime claims shall cover the amount of liability to be limited and any interest accruing from the date of the accident up to the date of constitution. Where the fund is constituted by way of security, the amount of the security shall cover the amount of the fund and any interest accruing thereon during the period of such constitution.

Where the fund is constituted with cash deposited, the date on which the fund is transferred into the bank account designated by the maritime court shall be deemed to be the date of constitution of the fund. Where the fund is constituted with security provided, the date on which the maritime court accepts the security shall be deemed to be the date of constitution of the fund.

Article 109 After a limitation fund for maritime claims has been constituted, the parties shall bring an action in respect of the maritime dispute with the maritime court with which the limitation

fund for maritime claims has been constituted, unless a jurisdiction agreement or arbitration agreement has been reached between the parties.

Article 110 A person, having wrongly applied for constitution of a limitation fund for maritime claims, shall indemnify the interested person for the losses thus incurred.

## Chapter X Procedure for Registration and Repayment of Debts

Article 111 After announcement of the maritime court's order for forced auction of a ship, the creditors shall, within the time limit announced, apply for registration of their claims pertaining to the ship to be auctioned. Creditors who fail to register their claims before expiry of the said time limit period shall be deemed to have abandoned their rights to be satisfied from the proceeds of the auction.

Article 112 After the maritime court's announcement of acceptance of the application to constitute a limitation fund for maritime claims, the creditors shall, within the time limit announced, apply for registration of their claims relevant to the maritime accident that occurred at a particular scene. The creditors who fail to register their claims before expiry of the time limit announced shall be deemed to have abandoned their rights to debt.

Article 113 A creditor who wishes to apply for registration of his claims shall file an application in writing with the maritime court and provide relevant debt evidence.

Debt evidence includes legally-binding judgements, written orders, conciliation statements, arbitral awards, notarised documents concerning creditors' rights to debt and other evidential material substantiating the maritime claim.

Article 114 The maritime court shall examine the application submitted by a creditor, and make an order to allow the registration if debt evidence is provided, and to reject the application if it is not.

Article 115 Where the maritime court, having examined the judgements, written orders, conciliation statements, arbitral awards, or the notarised documents concerning creditors' rights to debt provided by the creditors, firmly believe that they are all true and lawful, it shall make an order to confirm them.

Article 116 Where a creditor wishes to provide other maritime claim evidence, he shall, after having registered his claims, bring an action to confirm his rights before the maritime court where the claims are registered. Where an arbitration agreement has been concluded between the parties, they shall apply for arbitration promptly.

The judgements and written orders made by the maritime court to confirm the rights are legally binding, no parties may appeal against them.

Article 117 After examining and confirming the debts, the maritime court shall issue a notice to the creditors for a creditors' meeting, and make arrangements for and convene the creditors' meeting.

Article 118 The creditors' meeting may through negotiation put forward a plan for distribution of the proceeds from auction of the ship or the limitation fund for maritime claims and sign an agreement on satisfaction.

The agreement on satisfaction shall be legally binding after the maritime court makes an order to confirm it.

Where consultation at the creditors' meeting fails, the maritime court shall, according to the ranking of claims provided for in the Maritime Code of the People's Republic of China and other related laws, decide on the plan for distribution of the proceeds from auction of the ship or the limitation fund for maritime claims.

Article 119 The proceeds from auction of a ship and interest thereon, or the limitation fund for maritime claims and interest thereon, shall be distributed at the same time.

In distribution of the proceeds from auction of a ship, the legal costs to be borne by the person liable, expenses incurred in order to preserve the ship or to procure its auction and to distribute the proceeds from the auction, as well as other expenses incurred in the common interest of the creditors, shall first be paid out of the proceeds from such auction.

The balance, after satisfaction of the debts, shall be refunded to the former ship-owner or the person constituting the limitation fund for maritime claims.

## Chapter XI Procedure for Exigence of Maritime Liens

Article 120 Where a ship is transferred, the transferee may apply to the maritime court for exigence of the maritime lien, demanding the maritime lien holder to assert his right promptly so as to extinguish the maritime lien attached to the ship.

Article 121 A transferee who wishes to apply for exigence of the maritime lien shall file an application with the maritime court of the place where the ship is to be delivered or where the domicile of the transferee is located.

Article 122 A person who wishes to apply for exigence of the maritime lien, shall submit to the maritime court a written application, the contract for ship transfer, technical data of the ship and other documents. In the written application shall be stated the name of the ship, the facts and grounds therefor.

Article 123 The maritime court, having received the application and the relevant documents, shall examine them and, within seven days, make an order to approve or disapprove the application.

A transferee who is dissatisfied with such an order may apply for review not more than once.

Article 124 After an order to approve an application becomes effective, the maritime court shall issue an announcement in newspapers or other news media urging the maritime lien holder to assert his right within the period of exigence.

The period for exigence of a maritime lien is 60 days.

Article 125 A maritime lien holder who asserts his right within the period of exigence shall complete registration with the maritime court; if the lien holder fails to assert his right, he shall be deemed to have waived the maritime lien.

Article 126 Where on the expiry of the period of exigence, no one asserts the maritime lien, the maritime court shall, on the application of a party, make a judgement, declaring that the ship to be transferred is free from maritime lien. The judgement shall be published.

## Chapter XII Supplementary Provisions

Article 127 This Law shall go into effect as of July 1, 2000.



# **Law of the People's Republic of China Against Unfair Competition**

Adopted at the Third Meeting of the Standing Committee of the Eighth National People's Congress and promulgated by Order No.10 of the President of the People's Republic of China on September 2, 1993

## Contents

### Chapter I General Provisions

### Chapter II Acts of Unfair Competition

### Chapter III Supervision and Inspection

### Chapter IV Legal Responsibility

### Chapter V Supplementary Provisions

## Chapter I General Provisions

Article 1 This Law is formulated with a view to safeguarding the healthy development of socialist market economy, encouraging and protecting fair competition, repressing unfair competition acts, and protecting the lawful rights and interests of business operators and consumers.

Article 2 A business operator shall, in his market transactions, follow the principles of voluntariness, equality, fairness, honesty and credibility and observe the generally recognized business ethics.

"Unfair competition" mentioned in this Law refers to a business operator's acts violating the provisions of this Law, infringing upon the lawful rights and interests of another business operator and disturbing the socio-economic order.

"A business operator" mentioned in this Law refers to a legal person or any other economic organization or individual engaged in commodities marketing or profit-making services ("commodities" referred to hereinafter includes such services).

Article 3 People's governments at various levels shall take measures to repress unfair competition acts and create favourable environment and conditions for fair competition.

Administrative departments for industry and commerce of the people's governments at or above the county level shall exercise supervision over and inspection of unfair competition acts; where laws or administrative rules and regulations provide that other departments shall exercise the supervision and inspection, those provisions shall apply.

Article 4 The State shall encourage, support and protect all organizations and individuals in the exercise of social supervision over unfair competition acts.

No State functionary may support or cover up unfair competition acts.

## Chapter II Acts of Unfair Competition

Article 5 A business operator shall not harm his competitors in market transactions by resorting to any of the following unfair means:

- (1) counterfeiting a registered trademark of another person;
- (2) using for a commodity without authorization a unique name, package, or decoration of another's famous commodity, or using a name, package or decoration similar to that of another's famous commodity, thereby confusing the commodity with that famous commodity and leading the purchasers to mistake the former for the latter;
- (3) using without authorization the name of another enterprise or person, thereby leading people to mistake their commodities for those of the said enterprise or person; or
- (4) forging or counterfeiting authentication marks, famous-and-excellent-product marks or other product quality marks on their commodities, forging the origin of their products or making false and misleading indications as to the quality of their commodities.

Article 6 A public utility enterprise or any other business operator occupying monopoly status according to law shall not restrict people to purchasing commodities from the business operators designated by him, thereby precluding other business operators from fair competition.

Article 7 Governments and their subordinate departments shall not abuse administrative powers to restrict people to purchasing commodities from the business operators designated by them and impose limitations on the rightful operation activities of other business operators.

Governments and their subordinate departments shall not abuse administrative powers to restrict commodities originated in other places from entering the local markets or the local commodities from flowing into markets of other places.

Article 8 A business operator shall not resort to bribery, by offering money or goods or by any other means, in selling or purchasing commodities. A business operator who offers off-the-book rebate in secret to the other party, a unit or an individual, shall be deemed and punished as offering bribes; and any unit or individual that accepts off-the-book rebate in secret shall be deemed and punished as taking bribes.

A business operator may, in selling or purchasing commodities, expressly allow a discount to the other party and pay a commission to the middleman. The business operator who gives discount to the other party and pays commission to the middleman must truthfully enter them in the account.

The business operator who accepts the discount or the commission must also truthfully enter it in the account.

Article 9 A business operator may not, by advertisement or any other means, make false or misleading publicity of their commodities as to their quality, ingredients, functions, usage, producers, duration of validity or origin.

An advertisement agent may not act as agent for, or design, produce or release, a false advertisement while he clearly knows or ought to know its falsehood.

Article 10 A business operator shall not use any of the following means to infringe upon trade secrets:

- (1) obtaining an obligee's trade secrets by stealing, luring, intimidation or any other unfair means;
- (2) disclosing, using or allowing another person to use the trade secrets obtained from the obligee by the means mentioned in the preceding paragraph; or
- (3) in violation of the agreement or against the obligee's demand for keeping trade secrets, disclosing, using or allowing another person to use the trade secrets he possesses.

Obtaining, using or disclosing another's trade secrets by a third party who clearly knows or ought to know that the case falls under the unlawful acts listed in the preceding paragraph shall be deemed as infringement upon trade secrets.

"Trade secrets" mentioned in this Article refers to any technology information or business operation information which is unknown to the public, can bring about economic benefits to the obligee, has practical utility and about which the obligee has adopted secret-keeping measures.

Article 11 A business operator shall not, for the purpose of pushing out their competitors, sell their commodities at prices lower than costs.

Any of the following shall not be deemed as an unfair competition act:

- (1) selling perishables or live commodities;
- (2) disposing of commodities near expiration of their validity duration or those kept too long in stock;
- (3) seasonal sales; or
- (4) selling commodities at a reduced price for the purpose of clearing off debts, change of business or suspension of operation.

Article 12 A business operator may not, against the will of purchasers, conduct tie-in sale of commodities or attach any other unreasonable conditions to the sale of their commodities.

Article 13 A business operator shall not engage in any of the following lottery-attached sale activities:

- (1) lottery-attached sale conducted by such deceptive means as falsely declaring to have prize or intentionally making a designated insider win the prize;
- (2) lottery-attached sale employed as a means to sell goods of low quality at a high price; or
- (3) lottery-attached sale in form of lottery-drawing with the highest prize exceeding 5,000 yuan.

Article 14 A business operator shall not fabricate or spread false information to injure his competitors' commercial credit or the reputation of his competitors' commodities.

Article 15 Bidders shall not act in collusion with each other so as to force up or down the bidding prices.

Bidders and tender-invited shall not collude with each other so as to push out their competitors from fair competition.

### Chapter III Supervision and Inspection

Article 16 Supervision and inspection departments at or above the county level may carry out supervision over and inspection of unfair competition acts.

Article 17 Supervision and inspection departments shall, in supervising and inspecting unfair competition acts, have the right to exercise the following functions and powers:

- (1) to interrogate the business operators under inspection, interested persons, or witnesses in accordance with the prescribed procedures, and require them to provide testimonial materials or other materials relating to the unfair competition acts;
- (2) to inquire about and duplicate the agreements, account books, invoices, documents, records, business letters and telegrams or other materials relating to the unfair competition acts; and
- (3) to inspect the property involved in the unfair competition acts under Article 5 of this Law; and, when necessary, to order the business operators under inspection to explain the source and quantity of the commodities, suspend the sale and await the inspection thereof, and the property involved shall not be transferred, concealed or destroyed.

Article 18 Functionaries of supervision and inspection departments shall, when supervising and inspecting unfair competition acts, produce their inspection certificates.

Article 19 Business operators under inspection, interested persons and witnesses shall truthfully provide relevant materials or particulars when the supervision and inspection departments supervise and inspect unfair competition acts.

### Chapter IV Legal Responsibility

Article 20 A business operator who violates the provisions of this Law and thus causes damage to the infringed business operators, shall bear the liability of compensation for the damage. If the losses of the infringed business operator are difficult to estimate, the damages shall be the profits derived from the infringement by the infringer during the period of infringement. And the infringer shall also bear the reasonable expense paid by the infringed business operator for investigating the infringer's unfair competition acts violating his lawful rights and interests.

A business operator whose lawful rights and interests are infringed upon by unfair competition acts may bring a suit in a people's court.

Article 21 A business operator who counterfeits another's registered trademark, uses without authorization the name of another enterprise or person, forges or counterfeits authentication marks, famous-and-excellent- product marks or other product quality marks, forges origin of the products or makes false and misleading indications regarding the product quality shall be punished in accordance with the provisions of the Trademark Law of the People's Republic of China and the Law of the People's Republic of China on Product Quality.

In case a business operator uses for a commodity without authorization the name, package or decoration of a famous commodity or the name, package or decoration similar to that of a famous commodity and thereby confuses the commodity with another's famous commodity and leads the purchasers to mistake the former for the latter, the supervision and inspection department shall order the business operator to stop the illegal act and confiscate the illegal earnings and may, in light of the circumstances, impose a fine of not less than one time but not more than three times the illegal earnings; if the circumstances are serious, his business licence may be revoked; and if the commodities sold are fake and inferior, and the case constitutes a crime, he shall be investigated for criminal responsibility according to law.

Article 22 A business operator, who resorts to bribery by offering money or goods or by any other means in selling or purchasing commodities and if the case constitutes a crime, shall be investigated for criminal responsibility according to law; if the case does not constitute a crime, the supervision and inspection department may impose a fine of not less than 10,000 yuan but not more than 200,000 yuan in light of the circumstances and confiscate the illegal earnings, if any.

Article 23 In case a public utility enterprise or any other business operator occupying monopoly status according to law restricts people to purchasing commodities from a designated business operator in order to push out other business operators from fair competition, the supervision and inspection departments at the provincial level or of cities divided into districts shall order the ceasing of the illegal acts and may impose a fine of not less than 50,000 yuan but not more than 200,000 yuan in light of the circumstances. If such designated business operator takes advantage of his monopoly status to sell goods of low quality at high prices or indiscriminately collects fees, the inspection and supervision department shall confiscate the illegal earnings and may impose a fine of not less than one time but not more than three times the illegal earnings in light of the circumstances.

Article 24 In case a business operator makes false and misleading publicity of his commodities by advertisement or any other means, the supervision and inspection department shall order the said business operator to stop his illegal acts and eliminate the bad effects, and may impose a fine of not less than 10,000 yuan but not more than 200,000 yuan in light of the circumstances.

In case an advertisement agent acts as agent for, or designs, produces or releases, a false advertisement though the agent clearly knows or ought to know the falsehood, the supervision and inspection department shall order the ceasing of the illegal acts, confiscate the illegal earnings, and impose a fine according to law.

Article 25 In case a business operator violates the provisions of Article 10 of this Law and infringes upon trade secrets, the supervision and inspection department shall order the ceasing of the illegal acts and may impose a fine of not less than 10,000 yuan but not more than 200,000 yuan in light of the circumstances.

Article 26 In case a business operator engages in lottery-attached sale in violation of the provisions of Article 13 of this Law, the supervision and inspection department shall order the ceasing of the illegal acts and may impose a fine of not less than 10,000 yuan but not more than 100,000 yuan in light of the circumstances.

Article 27 Where bidders act in collusion with each other to force up or down the bidding price, or a bidder colludes with a tender-inviter for the purpose of pushing out their competitors, the successful bid shall be invalid, and the supervision and inspection department may impose a fine of not less than 10,000 yuan but not more than 200,000 yuan in light of the circumstances.

Article 28 In case a business operator acts in violation of the order of stopping the sale or forbidding the transfer, concealment or destruction of the property involved in the unfair competition acts, the supervision and inspection department may impose a fine of not less than one time but not more than three times the price of the property sold, transferred, concealed or destroyed.

Article 29 In case a party is not satisfied with the punishment decision made by the supervision and inspection department, it may apply for reconsideration to the competent department at the next higher level within 15 days from receipt of the decision; and if the party is still not satisfied with the reconsideration decision, it may bring a suit in a people's court within 15 days from receipt of the decision; and the party may also directly file a suit in a people's court.

Article 30 Where a government or its subordinate departments, in violation of the provisions of Article 7 of this Law, restrict people to purchasing commodities from a designated business operator or impose limits on other business operator's rightful operation activities or the normal circulation of commodities between different areas, the supervision and inspection department at higher levels shall order them to make corrections; and if the circumstances are serious, the persons held directly responsible shall be given administrative sanctions by the relevant department at the same or higher levels; if the designated business operator takes advantage of his status to sell goods of low quality at high prices or indiscriminately collects fees, the supervision and inspection department shall confiscate the illegal earnings and may impose a fine of not less than one time but not more than three times the illegal earnings in light of the circumstances.

Article 31 Where a State functionary engaged in supervision over and inspection of unfair competition acts abuses his power or neglects his duty, and if the case constitutes a crime, he shall be investigated for criminal responsibility according to law; if the case does not constitute a crime, he shall be given an administrative sanction.

Article 32 Where a State functionary engaged in supervision over and inspection of unfair competition acts practices favouritism or irregularities and intentionally harbours a business operator whom he clearly knows to be guilty of a crime by violating the provisions of this Law and attempts to shield him from prosecution, he shall be investigated for criminal responsibility according to law.

## Chapter V Supplementary Provisions

Article 33 This Law shall go into effect as of December 1, 1993.

# **Anti-monopoly Law of the People's Republic of China**

Adopted at the 29th Meeting of the Standing Committee of the Tenth National People's Congress  
on August 30, 2007

## Contents

Chapter I General Provisions

Chapter II Monopoly Agreements

Chapter III Abuse of Dominant Market Position

Chapter IV Concentration of Undertakings

Chapter V Abuse of Administrative Power to Eliminate or Restrict Competition

Chapter VI Investigation into Suspected Monopolistic Conducts

Chapter VII Legal Liabilities

Chapter VIII Supplementary Provisions

Chapter I General Provisions

Article 1 This Law is enacted for the purpose of preventing and restraining monopolistic conducts, protecting fair market competition, enhancing economic efficiency, safeguarding the interests of consumers and the interests of the society as a whole, and promoting the healthy development of socialist market economy.

Article 2 This Law is applicable to monopolistic conducts in economic activities within the territory of the People's Republic of China; and it is applicable to monopolistic conducts outside the territory of the People's Republic of China, which serve to eliminate or restrict competition on the domestic market of China.

Article 3 For the purposes of this Law, monopolistic conducts include:

- (1) monopoly agreements reached between undertakings ;
- (2) abuse of dominant market position by undertakings; and
- (3) concentration of undertakings that lead, or may lead to elimination or restriction of competition.



Article 4 The State shall formulate and implement competition rules which are compatible with the socialist market economy, in order to improve macro-economic regulation and build up a sound market network which operates in an integrated, open, competitive and orderly manner.

Article 5 Undertakings may, through fair competition and voluntary association, get themselves concentrated according to law, to expand the scale of their business operations and enhance their competitiveness on the market.

Article 6 Undertakings holding a dominant position on the market may not abuse such position to eliminate or restrict competition.

Article 7 With respect to the industries which are under the control of by the State-owned economic sector and have a bearing on the lifeline of the national economy or national security and the industries which exercise monopoly over the production and sale of certain commodities according to law, the State shall protect the lawful business operations of undertakings in these industries, and shall, in accordance with law, supervise and regulate their business operations and the prices of the commodities and services provided by them, in order to protect the consumers' interests and facilitate technological advance.

The undertakings mentioned in the preceding paragraph shall do business according to law, be honest, faithful and strictly self-disciplined, and subject themselves to public supervision, and they shall not harm the consumers' interests by taking advantage of their position of control or their monopolistic production and sale of certain commodities.

Article 8 Administrative departments or organizations authorized by laws or regulations to perform the function of administering public affairs may not abuse their administrative power to eliminate or restrict competition.

Article 9 The State Council shall establish an anti-monopoly commission to be in charge of organizing, coordinating and guiding anti-monopoly work and to perform the following duties:

- (1) studying and drafting policies on competition;
- (2) organizing investigation and assessment of competition on the market as a whole and publishing assessment reports;
- (3) formulating and releasing anti-monopoly guidelines;
- (4) coordinating administrative enforcement of the Anti-Monopoly Law; and
- (5) other duties as prescribed by the State Council.

The composition of and procedural rules for the anti-monopoly commission shall be specified by the State Council.

Article 10 The authorities responsible for enforcement of the Anti-monopoly Law specified by the State Council (hereinafter referred to, in general, as the authority for enforcement of the Anti-monopoly Law under the State Council) shall be in charge of such enforcement in accordance with the provisions of this Law.

The authority for enforcement of the Anti-monopoly Law under the State Council may, in light of the need of work, empower the appropriate departments of the people's governments of provinces, autonomous regions or municipalities directly under the Central Government to take charge of relevant enforcement of the Anti-monopoly Law in accordance with the provisions of this Law.

Article 11 Trade associations shall tighten their self-discipline, give guidance to the undertakings in their respective trades in lawful competition, and maintain the market order in competition.

Article 12 For the purposes of this Law, undertakings include natural persons, legal persons, and other organizations that engage in manufacturing, or selling commodities or providing services.

For the purposes of this Law, a relevant market consists of the range of the commodities for which, and the regions where, undertakings compete each other during a given period of time for specific commodities or services (hereinafter referred to, in general, as "commodities").

## Chapter II Monopoly Agreements

Article 13 Competing undertakings are prohibited from concluding the following monopoly agreements:

- (1) on fixing or changing commodity prices;
- (2) on restricting the amount of commodities manufactured or marketed;
- (3) on splitting the sales market or the purchasing market for raw and semi-finished materials;
- (4) on restricting the purchase of new technologies or equipment, or the development of new technologies or products;
- (5) on joint boycotting of transactions; and
- (6) other monopoly agreements confirmed as such by the authority for enforcement of the Anti-monopoly Law under the State Council.

For the purposes of this Law, monopoly agreements include agreements, decisions and other concerted conducts designed to eliminate or restrict competition.

Article 14 Undertakings are prohibited from concluding the following monopoly agreements with their trading counterparts:

- (1) on fixing the prices of commodities resold to a third party;
- (2) on restricting the lowest prices for commodities resold to a third party; and
- (3) other monopoly agreements confirmed as such by the authority for enforcement of the Anti-monopoly Law under the State Council.

Article 15 The provisions of Article 13 and 14 of this Law shall not be applicable to the agreements between undertakings which they can prove to be concluded for one of the following purposes:

- (1) improving technologies, or engaging in research and development of new products; or
- (2) improving product quality, reducing cost, and enhancing efficiency, unifying specifications and standards of products, or implementing specialized division of production;
- (3) increasing the efficiency and competitiveness of small and medium-sized undertakings;
- (4) serving public interests in energy conservation, environmental protection and disaster relief;
- (5) mitigating sharp decrease in sales volumes or obvious overproduction caused by economic depression;
- (6) safeguarding legitimate interests in foreign trade and in economic cooperation with foreign counterparts; or
- (7) other purposes as prescribed by law or the State Council.

In the cases as specified in Subparagraphs (1) through (5) of the preceding paragraph, where the provisions of Articles 13 and 14 of this Law are not applicable, the undertakings shall, in addition, prove that the agreements reached will not substantially restrict competition in the relevant market and that they can enable the consumers to share the benefits derived therefrom.

Article 16 Trade associations may not make arrangements for undertakings within their respective trades to engage in the monopolistic practices prohibited by the provisions of this Chapter.

### Chapter III Abuse of Dominant Market Position

Article 17 Undertakings holding dominant market positions are prohibited from doing the following by abusing their dominant market positions:

- (1) selling commodities at unfairly high prices or buying commodities at unfairly low prices;
- (2) without justifiable reasons, selling commodities at prices below cost;
- (3) without justifiable reasons, refusing to enter into transactions with their trading counterparts;
- (4) without justifiable reasons, allowing their trading counterparts to make transactions exclusively with themselves or with the undertakings designated by them;
- (5) without justifiable reasons, conducting tie-in sale of commodities or adding other unreasonable trading conditions to transactions;
- (6) without justifiable reasons, applying differential prices and other transaction terms among their trading counterparts who are on an equal footing; or

(7) other acts of abuse of dominant market positions confirmed as such by the authority for enforcement of the Anti-monopoly Law under the State Council.

For the purposes of this Law, dominant market position means a market position held by undertakings that are capable of controlling the prices or quantities of commodities or other transaction terms in a relevant market, or preventing or exerting an influence on the access of other undertakings to the market.

Article 18 The dominant market position of an undertaking shall be determined on the basis of the following factors:

- (1) its share on a relevant market and the competitiveness on the market;
- (2) its ability to control the sales market or the purchasing market for raw and semi-finished materials;
- (3) its financial strength and technical conditions;
- (4) the extent to which other business managers depend on it in transactions ;
- (5) the difficulty that other undertakings find in entering a relevant market; and
- (6) other factors related to the determination of the dominant market position held by an undertaking.

Article 19 The conclusion that an undertaking holds a dominant market position may be deduced from any one of the following circumstances:

- (1) the market share of one undertaking accounts for half of the total in a relevant market;
- (2) the joint market share of two undertakings accounts for two-thirds of the total, in a relevant market; or
- (3) the joint market share of three undertakings accounts for three-fourths of the total in a relevant market.

Under the circumstance specified in Subparagraph (2) or (3) of the preceding paragraph, if the market share of one of the undertakings is less than one-tenths of the total, the undertakings shall not be considered to have a dominant market position.

Where an undertaking that is considered to hold a dominant market position has evidence to the contrary, he shall not be considered to hold a dominant market position.

## Chapter IV Concentration of Undertakings

Article 20 Concentration of undertakings means the following:

- (1) merger of undertakings;
- (2) control over other undertakings gained by an undertaking through acquiring their shares or assets; and
- (3) control over other undertakings or the ability capable of exerting a decisive influence on the same gained by an undertaking through signing contracts or other means.

Article 21 When their intended concentration reaches the threshold level as set by the State Council, undertakings shall declare in advance to the authority for enforcement of the Anti-monopoly Law under the State Council; they shall not implement the concentration in the absence of such declaration.

Article 22 In any of the following circumstances, undertakings may dispense with declaration to the authority for enforcement of the Anti-monopoly Law under the State Council:

- (1) one of the undertakings involved in the concentration owns 50 percent or more of the voting shares or assets of each of the other undertakings; or
- (2) one and the same undertaking not involved in the concentration owns 50 percent or more of the voting shares or assets of each of the undertakings involved in the concentration.

Article 23 To declare concentration to the authority for enforcement of the Anti-monopoly Law under the State Council, the undertakings shall submit the following documents and materials:

- (1) declaration in writing;
- (2) explanation of the impact to be exerted by the concentration on competition in a relevant market;
- (3) concentration agreement;
- (4) the financial report of each of the undertakings in the previous fiscal year, which is audited by a certified public accountant firm; and
- (5) other documents and materials as specified by the authority for enforcement of the Anti-monopoly Law under the State Council.

In the written declaration shall clearly be stated the titles of the undertakings involved in the concentration, their domiciles, business scopes, the anticipated date for concentration and other matters specified by the authority for enforcement of the Anti-monopoly Law under the State Council.

Article 24 In case documents or materials submitted by the undertakings are incomplete, the undertakings concerned shall supplement the relevant documents or materials within the time limit prescribed by the authority for enforcement of the Anti-monopoly Law under the State Council. If they fail to do so at the expiration of the time limit, they shall be deemed to have made no declaration.

Article 25 The authority for enforcement of the Anti-monopoly Law under the State Council shall, within 30 days from the date it receives the documents or materials submitted by the undertakings which conform to the provisions of Article 23 of this Law, make a preliminary review of the concentration declared by the businesses and make a decision whether to conduct a further review, and notify the undertakings of its decision in writing. Before the authority for enforcement of the Anti-monopoly Law under the State Council makes such decision, the undertakings shall not implement concentration.

Where the authority for enforcement of the Anti-monopoly Law under the State Council decides not to conduct further review or fails to make such a decision at the expiration of the specified time limit, the undertakings may implement concentration.

Article 26 Where the authority for enforcement of the Anti-monopoly Law under the State Council decides to conduct further review, it shall, within 90 days from the date of decision, complete such review, decide whether to prohibit the undertakings from concentrating, and notify them of such decision in writing. Where a decision on prohibiting the undertakings from concentrating is made, the reasons for such decision shall be given. The undertakings shall not implement concentration during the period of review.

Under any of the following circumstances, the authority for enforcement of the Anti-monopoly Law under the State Council may extend the period for review as specified in the preceding paragraph on condition that it notifies the undertakings of the extension in writing, however, the extension shall not exceed the maximum of 60 days:

- (1) The undertakings agree to the extension;
- (2) The documents or materials submitted by undertakings are inaccurate and therefore need further verification; or
- (3) major changes have take place after the undertakings made the declaration.

Where the authority for enforcement of the Anti-monopoly Law under the State Council fails to make a decision at the expiration of the time limit, the undertakings may implement concentration.

Article 27 The following factors shall be taken into consideration in the review of concentration of undertakings:

- (1) the market shares of the undertakings involved in concentration in a relevant market and their power of control over the market;
- (2) the degree of concentration in relevant market;
- (3) the impact of their concentration on assess to the market and technological advance;
- (4) the impact of their concentration on consumers and the other relevant undertakings concerned;
- (5) the impact of their concentration on the development of the national economy; and

(6) other factors which the authority for enforcement of the Anti-monopoly Law under the State Council deems to need consideration in terms of its impact on market competition.

Article 28 If the concentration of undertakings leads, or may lead, to elimination or restriction of competition, the authority for enforcement of the Anti-monopoly Law under the State Council shall make a decision to prohibit their concentration. However, if the undertakings concerned can prove that the advantages of such concentration to competition obviously outweigh the disadvantages, or that the concentration is in the public interest, the authority for enforcement of the Anti-monopoly Law under the State Council may decide not to prohibit their concentration.

Article 29 Where the authority for enforcement of the Anti-monopoly Law under the State Council does not prohibit the concentration of undertakings, it may decide to impose additional, restrictive conditions for lessening the negative impact exerted by such concentration on competition.

Article 30 The authority for enforcement of the Anti-monopoly Law under the State Council shall, in a timely manner, publish its decisions on prohibition against the concentration of undertakings or its decisions on imposing additional restrictive conditions on the implementation of such concentration.

Article 31 Where a foreign investor participates in the concentration of undertakings by merging and acquiring a domestic enterprise or by any other means, which involves national security, the matter shall be subject to review on national security as is required by the relevant State regulations, in addition to the review on the concentration of undertakings in accordance with the provisions of this Law.

## Chapter V Abuse of Administrative Power to Eliminate or Restrict Competition

Article 32 Administrative departments and other organizations authorized by laws or regulations to perform the function of administering public affairs may not abuse their administrative power to require, or require in disguised form, units or individuals to deal in, purchase or use only the commodities supplied by the undertakings designated by them.

Article 33 Administrative departments and other organizations authorized by laws or regulations to perform the function of administering public affairs may not abuse their administrative power to impede the free flow of commodities between different regions by any of the following means:

(1) setting discriminatory charging items, implementing discriminatory charge rates, or fixing discriminatory prices for non-local commodities;

(2) imposing technical specifications or test standards on non-local commodities, which are different from those on local commodities of similar types, or taking discriminatory technical measures, such as repeated test and repeated certification, against non-local commodities, for the purpose of restricting the access of non-local commodities to the local market;

- (3) adopting a special practice of administrative licensing for non-local commodities, for the purpose of restricting the access of non-local commodities to the local market;
- (4) erecting barriers or adopting other means to prevent non-local commodities from coming in or local commodities from going out; or
- (5) other means designed to impede the free flow of commodities between regions.

Article 34 Administrative departments and other organizations authorized by laws or regulations to perform the function of administering public affairs may not abuse their administrative power to exclude non-local undertakings from participating, or restrict their participation, in local invitation and tendering by imposing discriminatory qualification requirements or assessment standards, or by refusing to publish information according to law.

Article 35 Administrative departments and other organizations authorized by laws or regulations to perform the function of administering public affairs may not abuse their administrative power to exclude non-local undertakings from making investment or restrict their investment locally or exclude them from establishing branch offices locally or restrict their establishment of such offices, by treating them unequally as compared with the local undertakings, or by other means.

Article 36 Administrative departments and other organizations authorized by laws or regulations to perform the function of administering public affairs may not abuse their administrative power to compel undertakings to engage in monopolistic conducts that are prohibited by this Law.

Article 37 Administrative organs may not abuse their administrative power to formulate regulations with the contents of eliminating or restricting competition.

## Chapter VI Investigation into Suspected Monopolistic Conducts

Article 38 The authority for enforcement of the Anti-monopoly Law shall investigate any suspected monopolistic conduct according to law.

All units and individuals shall have the right to report to the authority for enforcement of the Anti-monopoly Law against suspected monopolistic conducts. The latter shall keep the informations confidential.

If the report is made in writing and relevant facts and evidence are provided, the authority for enforcement of the Anti-monopoly Law shall conduct necessary investigation.

Article 39 When conducting investigations into a suspected monopolistic conduct, the authority for enforcement of the Anti-monopoly Law may take the following measures:

- (1) conducting inspection of the business places or the relevant premises of the undertakings under investigation;



- (2) making inquiries of the undertakings under investigation, the interested parties, or other units or individuals involved, and requesting them to provide relevant explanations;
- (3) consulting and duplicating the relevant documents and materials of the undertakings under investigation, the interested parties and other relevant units and individuals, such as bills, certificates, agreements, account books, business correspondence and electronic data;
- (4) sealing up or seizing relevant evidence; and
- (5) inquiring about the bank accounts of the undertakings under investigation.

For taking the measures specified in the preceding paragraph, a written report shall be submitted for approval to the principal leading person of the authority for enforcement of the Anti-monopoly Law.

Article 40 For the authority for enforcement of the Anti-monopoly Law to conduct investigation into suspected monopolistic conducts, there shall be at least two law-enforcement officers, who shall produce their law enforcement papers.

The law-enforcement officers shall make written records when conducting inquiry and investigation, which shall be signed by the persons after being inquired or investigated.

Article 41 The authority for enforcement of the Anti-monopoly Law and its staff members are obligated to keep confidential the commercial secrets they come to have access to in the course of law enforcement.

Article 42 The undertakings under investigation, the interested parties or other relevant units or individuals shall cooperate with the authority for enforcement of the Anti-monopoly Law in performing their duties in accordance with law, and they shall not refuse to submit to or hinder the investigation conducted by the authority for enforcement of the Anti-monopoly Law.

Article 43 The undertakings under investigation and the interested parties shall have the right to make statements. The authority for enforcement of the Anti-monopoly Law shall verify the facts, justifications and evidence presented by the said undertakings or interested parties.

Article 44 Where after investigation into and verification of the suspected monopolistic conduct, the authority for enforcement of the Anti-monopoly Law concludes that it constitutes a monopolistic conduct, the said authority shall make a decision on how to deal with it in accordance with law and may make the matter known to the public.

Article 45 With respect to the suspected monopolistic conduct which is under investigation by the authority for enforcement of the Anti-monopoly Law, if the undertakings under investigation commits themselves to adopt specific measures to eliminate the consequences of its conduct within a certain period of time which is accepted by the said authority, the authority for enforcement of the Anti-monopoly Law may decide to suspend the investigation. In the decision shall clearly be stated the details of the undertakings' commitments.

Where the authority for enforcement of the Anti-monopoly Law decides to suspend investigation, it shall oversee the fulfillment of the commitments made by the undertaking. Where the

undertaking fulfills its commitments, the authority for enforcement of the Anti-monopoly Law may decide to terminate the investigation.

In any of the following circumstances, the authority for enforcement of the Anti-monopoly Law shall resume investigation:

- (1) The undertakings concerned fail to fulfill its commitments;
- (2) Material changes have taken place in respect of the facts on which the decision to suspend investigation was based; or
- (3) The decision to suspend investigation was based on incomplete or untrue information provided by the undertaking concerned.

## Chapter VII Legal Liabilities

Article 46 Where an undertaking, in violation of the provisions of this Law, concludes and implements a monopoly agreement, the authority for enforcement of the Anti-monopoly Law shall instruct it to discontinue the violation, confiscate its unlawful gains, and, in addition, impose on it a fine of not less than one percent but not more than 10 percent of its sales achieved in the previous year. If such monopoly agreement has not been implemented, it may be fined not more than RMB 500,000 yuan.

If the business manage, on its own initiative, reports to the authority for enforcement of the Anti-monopoly Law about the monopoly agreement reached, and provides material evidence, the said authority may, at its discretion, mitigate, or exempt the undertaking from, punishment.

Where a trade association, in violation of the provisions of this Law, has arranged the undertaking in the trade to reach a monopoly agreement, the authority for enforcement of the Anti-monopoly Law may impose on it a fine of not more than 500,000 yuan. If the circumstances are serious, the administrative department for the registration of public organizations may cancel the registration of the trade association in accordance with law.

Article 47 Where an undertaking, in violation of the provisions of this Law, abuses its dominant market position, the authority for enforcement of the Anti-monopoly Law shall instruct it to discontinue such violation, confiscate its unlawful gains and, in addition, impose on it a fine of not less than one percent but not more than 10 percent of its sales achieved in the previous year.

Article 48 Where the undertakings, in violation of the provisions of this Law, implement concentration, the authority for enforcement of the Anti-monopoly Law under the State Council shall instruct them to discontinue such concentration, and within a specified time limit to dispose of their shares or assets, transfer the business and adopt other necessary measures to return to the state prior to the concentration, and it may impose on them a fine of not more than 500,000 yuan.

Article 49 To determine the specific amount of fines prescribed in Articles 46, 47 and 48, the authority for enforcement of the Anti-monopoly Law shall consider such factors as the nature, extent and duration of the violations.

Article 50 Where the monopolistic conduct of an undertaking has caused losses to another person, it shall bear civil liabilities according to law.

Article 51 Where an administrative development or an organization authorized by laws or regulations to perform the function of administering public affairs abuses its administrative power to eliminate or restrict competition, the department at a higher level shall instruct it to rectify; the leading person directly in charge and the other persons directly responsible shall be given administrative sanctions in accordance with law. The authority for enforcement of the Anti-monopoly Law may submit a proposal to the relevant department at a higher level for handling the matter according to law.

Where otherwise provided for by laws or administrative regulations in respect of administrative departments or organizations authorized by laws or regulations to perform the function of administering public affairs that abuse their administrative power to eliminate or restrict competition, such provisions shall prevail.

Article 52 Where, during the review and investigation conducted by the authority for enforcement of the Anti-monopoly Law, a unit or individual refuses to provide relevant materials or information, or provides false materials or information, or conceals, or destroys, or transfers evidence, or refuses to submit to or obstructs investigation in any other manner, the authority for enforcement of the Anti-monopoly Law shall instruct it/him to rectify, and a fine of not more than 20,000 yuan shall be imposed on the individual and not more than 200,000 yuan on the unit; if the circumstances are serious, a fine of not less than 20,000 yuan but not more than 100,000 yuan shall be imposed on the individual and not less than 200,000 yuan but not more than one million yuan on the unit; and if a crime is constituted, criminal liability shall be investigated for in accordance with law.

Article 53 Where an undertaking is dissatisfied with the decision made by the authority for enforcement of the Anti-monopoly Law in accordance with the provisions of Article 28 or 29 of this Law, it may first apply for administrative reconsideration according to law; and if it is dissatisfied with the decision made after administrative reconsideration, it may bring an administrative action before the court according to law.

Where an undertaking is dissatisfied with any decision made by the authority for enforcement of the Anti-monopoly Law other than the decisions specified in the preceding paragraph, it may apply for administrative reconsideration or bring an administrative action before the court according to law.

Article 54 Where a staff member of the authority for enforcement of the Anti-monopoly Law abuses his power, neglects his duty, engages in malpractices for personal gain, or divulges commercial secrets he comes to have access to in the course of law enforcement, which constitutes a crime, he shall be investigated for criminal liability according to law; and if his case is not serious enough to constitute a crime, he shall be given an administrative sanction according to law.

## Chapter VIII Supplementary Provisions

Article 55 This law is not applicable to undertakings who exercise their intellectual property rights in accordance with the laws and administrative regulations on intellectual property rights; however, this Law shall be applicable to the undertakings who eliminate or restrict market competition by abusing their intellectual property rights.

Article 56 This Law is not applicable to the association or cooperation by agricultural producers or rural economic organizations in their business activities of production, processing, sale, transportation, storage of farm products, etc.

Article 57 This Law shall go into effect as of August 1, 2008.

## **Law of the People's Republic of China on Product Quality**

Adopted at the 30th Meeting of the Standing Committee of the Seventh National People's Congress and promulgated by the Order No. 71 of the President of the People's Republic of China on February 22, 1993, amended in accordance with the Decision of the Standing Committee of the Ninth National People's Congress on Revision of the Law of the People's Republic of China on Product Quality adopted at the 16th Meeting on July 8, 2000

### Contents

#### Chapter I General Provisions

#### Chapter II Supervision over Product Quality

#### Chapter III Liability and Obligation of Producers and Sellers in Respect of Product Quality

##### Section 1 Liability and Obligation of Producers in Respect of Product Quality

##### Section 2 Liability and Obligation of Sellers in Respect of Product Quality

#### Chapter IV Compensation for Damage

#### Chapter V Penalty Provisions

#### Chapter VI Supplementary Provisions

#### Chapter I General Provisions

Article 1 This Law is enacted to strengthen the supervision and control over product quality, to improve product quality, to define the liability relating thereto, to protect the legitimate rights and interests of consumers and to safeguard the social and economic order.

Article 2 Anyone who manufactures or sells any product within the territory of the People's Republic of China shall abide by this Law.

For the purposes of this Law, "product" means one which is processed or manufactured for sale.

This Law shall not apply to construction projects. However, it shall be applicable to those materials, components, fittings and equipment used for construction which fall within the scope of the definition mentioned in the preceding paragraph.

Article 3 Producers and sellers shall establish and improve their internal system for product quality control, and strictly apply the quality standards for jobs, the quality responsibility system and the related check measures.

Article 4 Producers and sellers shall be liable for product quality in accordance with this Law.

Article 5 It is prohibited to forge or fraudulently use authentication marks or other product quality marks; it is prohibited to forge the origin of a product, or to forge or fraudulently use the name and address of another producer; and it is prohibited to mix impurities or imitations into a product that is manufactured or for sale, or pass a fake product off as a genuine one, or pass a defective product off as a quality one.

Article 6 The State encourages the popularization of scientific methods for quality control and the adoption of advanced science and technology, and encourages enterprises to make their product quality reach and surpass their respective sectoral standards, national standards and international standards.

Units and individuals that have made outstanding achievements in exercising advanced control over product quality and in raising their product quality to advanced international standards shall be awarded.

Article 7 People's governments at various levels shall incorporate the improvement of product quality into their plans for national economic and social development, improve their overall planning, organization and leadership in respect of product quality, provide guidance to producers and sellers and urge them to tighten control over product quality and improve product quality, ensure that the government departments concerned will, in accordance with law, take measures to stop any violations of this Law committed in the process of manufacture and sale of products, and guarantee that this Law is implemented.

Article 8 The department for supervision over product quality under the State Council shall be responsible for supervision over product quality throughout the country. The relevant departments under the State Council shall be responsible for supervision over product quality within the scope of their respective functions and responsibilities.

Local departments for supervision over product quality at or above the county level shall be in charge of supervision over product quality within their respective administrative regions. The relevant departments in the local people's governments at or above the county level shall be responsible for supervision over product quality within the scope of their respective functions and responsibilities.

Where laws provide otherwise with respect to departments for supervision over product quality, the provisions of such laws shall apply.

Article 9 No functionaries of the local people's governments at various levels or of other State organs may abuse their power, neglect their duty, engage in malpractices for personal gain, shield or connive at violations of this Law committed in the process of manufacture or sale within their own regions, or obstruct or interfere in the investigation and handling of such violations.

Where a local people's government at any level or a State organ shields or connives at violations of this Law committed in the process of manufacture or sale, the person who is chiefly responsible shall be investigated for legal responsibility in accordance with law.

Article 10 All units and individuals shall have the right to inform the departments for supervision over product quality or other relevant departments against any violations of this Law.

The Departments for supervision over product quality and other relevant departments shall keep secrets for the informers, and award them in accordance with the relevant regulations of the people's governments of provinces, autonomous regions, or municipalities directly under the Central Government.

Article 11 No units or individuals may exclude up-to-standard products manufactured by enterprises or sectors from entering into their regions or sectors.

## Chapter II Supervision over Product Quality

Article 12 The quality of a product shall undergo inspection until it proves to be up to the standards. No sub-standard product may be passed off as an up-to-standard one.

Article 13 Industrial products constituting potential threats to human health, personal safety and safety of property shall be in conformity with the national standards and sectoral standards for ensuring human health, personal safety and safety of property; with regard to products for which there are no national or sectoral standards to measure up to, products shall meet the requirements for ensuring human, personal safety and safety of property.

Manufacturing and selling of industrial products that do not conform to the standards and requirements for ensuring human health, personal safety and safety of property are prohibited. The specific administrative measures shall be prescribed by the State Council.

Article 14 The State applies, in light of the quality control standards used internationally, the practice of authentication with respect to the quality series of enterprises. An enterprise may, on a voluntary basis, apply for authentication with respect to its quality series to an authentication body approved by the department for supervision over product quality under the State Council or by a department authorized by the said department. The enterprise that is authenticated as qualified shall be issued an authentication certificate for its quality series by the authentication body.

The State applies, in light of the internationally advanced product standards and technical requirements, the system for product quality authentication. An enterprise may, on a voluntary basis, apply for authentication with respect to the quality of its products to an authentication body approved by the department for supervision over product quality under the State Council or by a department authorized by the said department. The enterprise whose product quality is authenticated as up-to-standard shall be issued an authentication certificate for its product quality by the authentication body and shall be permitted to use product quality authentication mark on its products or the packages thereof.

Article 15 The State, with respect to product quality, applies a system of supervision and inspection with random checking as the main form. Products constituting potential threats to human health, to personal safety and to safety of property, important industrial products which have a bearing on the national economy and the people's wellbeing, and products with quality problems as reported by consumers or relevant organizations shall be subjected to random checking. Samples for random checking shall, at any time, be selected from the market or from among the finished products ready for sale in the storehouse of an enterprise. Supervision and random checking shall be planned and arranged by the department for supervision over product quality under the State Council. The local departments for supervision over product quality in the people's governments at or above the county level may also make arrangements for supervision and random checking within their respective administrative regions. Where laws provide otherwise with respect to supervision over and inspection of product quality, the provisions of such laws shall apply.

Local departments may not repeat random checking already conducted by State departments; departments at lower levels may not repeat random checking already conducted by departments at higher levels.

Products may be inspected where random checking of such products so requires, but the amount of samples selected for inspection may not exceed the reasonable need of the inspection and no fees may be charged from the enterprises concerned. The expenses thus incurred shall be disbursed in accordance with the relevant regulations of the State Council.

Where producers or sellers have objections to the result of inspection, they may, within 15 days from the date the result is received, apply to the department for supervision over product quality that has conducted the random checking or its superior for re-inspection. The department for supervision over product quality that conducts the re-inspection shall make a conclusion afterwards.

Article 16 No producers or sellers may refuse to undergo supervision over and inspection of their product quality conducted in accordance with law.

Article 17 Where the quality of a product is proved to be not up to standard after random checking is conducted in accordance with the provisions of this Law, the department for supervision over product quality that has conducted random checking shall order the producer and/or seller to improve it within a time limit. If the producer and/or seller fails to do so at the expiration of the time limit, the matter shall be announced by the department for supervision over product quality under the people's government at or above the provincial level; if the product quality fails to pass re-inspection conducted after the announcement, the producer shall be ordered to discontinue production and/or business operation for overhaul within a time limit; if it again fails to pass another re-inspection conducted at the expiration of the time limit, the producer's and/or seller's business license shall be revoked.

Where a product is found through random checking to have serious quality problems, punishment shall be meted out in accordance with the relevant provisions in Chapter V of this Law.



Article 18 The departments for supervision over product quality at or above the county level may, on the basis of the obtained evidence for or information against suspected violations of this law, exercise the following functions and powers when investigating and handling such violations:

- (1) to conduct on-the-spot inspection of the place where the party is suspected of engaging in production or sale activities in violation of this Law;
- (2) to conduct investigation among the legal representative of the party, the person who is chiefly in charge, and other persons concerned for information related to the production or sale activities engaged in by the suspected party in violation of this Law;
- (3) to look into and duplicate the contracts, invoices and account books concerning the party and other relevant material; and
- (4) to seal up or seize the products which are regarded, on the basis of evidence, as not being in conformity with the national or sectoral standards for ensuring human health, personal safety and safety of property or as having other kinds of serious quality problems, and the raw and supplementary materials, package materials and production tools that are used directly for the manufacture and sale of such products.

Administrative departments for industry and commerce at or above the county level may, within the scope of their functions and duties defined by the State Council, exercise the functions and powers mentioned in the preceding paragraph when investigating and handling suspected violations of this Law.

Article 19 Product quality inspection institutions shall have the necessary testing facilities and competence and shall undertake inspection of product quality only after being appraised and endorsed by the department for supervision over product quality under the people's government at or above the provincial level or a department authorized by the said department. Where laws or administrative regulations provide otherwise with respect to the institutions for inspection of product quality, the provisions of such laws or administrative regulations shall apply.

Article 20 Intermediary bodies for product quality inspection or authentication shall be established in accordance with law, and they may not be subordinate to or have any relationship of interest with any administrative department or other state organs.

Article 21 Institutions for product quality inspection or authentication shall, on the basis of relevant standards, be objective and impartial in issuing the result of inspection or authentication certificate.

Institutions for product quality inspection or authentication shall, in accordance with the relevant regulations of the State, conduct follow-up inspection of the products bearing the authentication mark with approval; where products not conforming to the standards for authentication bear such mark, it shall demand rectification; if the circumstances are serious, the products shall be disqualified from using the mark.

Article 22 Consumers shall have the right to make inquiries to the producers and sellers about the quality of their products. Where a complaint is made to a department for supervision over product

quality, or to an administrative department for industry and commerce, or to any other department concerned, the department that receives the complaint shall be responsible for handling the case.

Article 23 Public organizations protecting the rights and interests of consumers may suggest that the department concerned dispose of the product quality problems as reported by consumers, and may support consumers in their efforts to bring a suit to a people's court with respect to the damage caused by quality problems of products.

Article 24 The department for supervision over product quality under the State Council and the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall regularly issue Quality Status Bulletin regarding the products which they have conducted random checking.

Article 25 No departments for supervision over product quality, or other State organs, or institutions for product quality inspection may recommend any manufacturer's products to the public, or participate in business activities in the form of supervision over the manufacture or sale of products.

### Chapter III Liability and Obligation of Producers and Sellers in Respect of Product Quality

#### Section 1 Liability and Obligation of Producers in Respect of Product Quality

Article 26 Producers shall be liable for the quality of the products they produce. The products shall meet the following quality requirements:

- (1) constituting no unreasonable threats to personal safety or safety of property, and conforming to the national standards or the sectoral standards for ensuring human health, personal safety and safety of property, where there are such standards;
- (2) possessing the properties as required, except for those with directions stating their functional defects; and
- (3) conforming to the product standards marked on the products or on the packages thereof, and to the quality conditions indicated by way of product directions, samples, etc.

Article 27 Marks on the products or on the packages thereof shall be authentic and meet the following requirements:

- (1) with certificate showing that the product has passed quality inspection;
- (2) with name of the product, name and address of the producer, all marked in Chinese;
- (3) with the necessary indications in Chinese regarding the specifications and grade of the product, the main ingredients and their quantities contained in the product, where such particulars are required to be indicated according to the characteristics and the instructions for use of the product;

with the indications on the package of information necessary for consumers to know in advance, or providing consumers in advance with documents indicating such information;

(4) with production date, safe-use period or date of expiry clearly indicated in easily spotted areas if the product is to be used within a time limit; and

(5) with a warning mark or statement in Chinese for a product which, if improperly used, may cause damage to the product itself, or may endanger personal safety or safety of property.

Food products without package and other non-packed products which are difficult to be marked due to their special nature may dispense with product marks.

Article 28 The packages of dangerous products, such as fragile, inflammable, explosive, poisonous, corrosive, radioactive products, of products that should be kept upright during storage and transportation, and of other products with special requirements shall meet the necessary requirements in respect of their quality and carry warning marks or statements in Chinese indicating directions for storage and transportation, as required by relevant State regulations.

Article 29 No producer may produce any product that has been eliminated by State orders.

Article 30 No producer may forge the origin of a product, or forge or illegally use another producer's name and address.

Article 31 No producer may forge or illegally use another producer's authentication marks or other product quality marks.

Article 32 In producing products, no producer may mix impurities or imitations into the products, or substitute a fake product for a genuine one, a defective product for a high-quality one, or pass a substandard product off as an up-to-standard one.

## Section 2 Liability and Obligation of Sellers in Respect of Product Quality

Article 33 A seller shall establish and practise a check-for-acceptance system for replenishment of his stock, and examine the quality certificates and other marks.

Article 34 A seller shall adopt measures to keep the products for sale in good quality.

Article 35 No seller may sell products which are eliminated and the sale of which is stopped by State organs, or expired and deteriorated products.

Article 36 The marks of a seller's products shall conform to the provisions of Article 27 of this Law.

Article 37 No seller may forge the origin of a product, or forge or fraudulently use another producer's name and address.

Article 38 No seller may forge or fraudulently use another producer's authentication marks or other product quality marks.

Article 39 In selling products, no seller may mix impurities or imitations into the products, or substitute a fake product for a genuine one, a defective product for a high-quality one, or pass a substandard product off as an up-to-standard one.

#### Chapter IV Compensation for Damage

Article 40 A seller shall be responsible for repair or change of the product, or for refund of the purchase price if the product he sold is found to be in any of the following conditions and, if losses are caused to the consumer who bought the product, the seller shall compensate for the losses:

- (1) The product does not possess the properties as required and there are no prior indications of the same;
- (2) The product does not conform to the product standards marked on it or its package; or
- (3) The product does not conform to the quality conditions indicated by way of product directions, samples, etc.

After the repair, change, refund or compensation has been made in accordance with the provisions of the preceding paragraph, if it is the producer or another seller who supplied the product to the seller (hereinafter referred to as supplier) that should bear the liability, the seller shall have the right to recover his loss from the producer or the supplier.

Where a seller fails to make the repair, change, refund, or compensation in accordance with the provisions in the first paragraph, the department for supervision over product quality or the administrative department for industry and commerce shall order the seller to do it.

Where the sale contract or processing contract concluded between a producer and another, a seller and another or between a producer and a seller provides otherwise, the parties concerned shall act in accordance with the provisions of the contract.

Article 41 If a producer's defective product causes physical injury to a person or damage to property other than the defective product itself (hereinafter referred to as another person's property), he shall be liable for compensation.

A producer shall not be liable for compensation if he can prove the existence of any of the following circumstances:

- (1) The product has not been put in circulation;
- (2) The defect causing the damage does not exist at the time when the product is put in circulation; or
- (3) The science and technology at the time the product is put in circulation is at a level incapable of detecting the defect.

Article 42 Where physical injury is caused to a person or damage to another person's property by a product's defect resulting from the seller's fault, the seller shall be liable for compensation.

Where the seller can identify neither the producer of the defective product nor the supplier thereof, he shall be liable for compensation.

Article 43 Where a defective product causes physical injury to a person or damage to another person's property, the victim may claim compensation from the producer or from the seller of such product. Where the seller has made the compensation when it is the producer that should bear the liability, the seller shall have the right to recover the loss from the producer. Where the producer has made the compensation when it is the seller that should bear the liability, the producer shall have the right to recover the loss from the seller.

Article 44 Where physical injury is caused by defects in a product, the person liable shall compensate the victim for the expenses of medical treatment, expenses of nursing care during treatment, and the decreased earnings due to the loss of his working time; where the victim is disabled, the person liable shall, in addition, pay for the self-care equipment, subsistence allowances, disability compensation to the victim, living expenses necessary for any other person(s) supported by the victim, etc. Where such defects cause death to the victim, the person liable shall also pay for the funeral expenses, compensation for death, and the living expenses necessary for any other person(s) supported by the deceased before his death, etc.

Where the damage to the property of the victim is caused by the defect in a product, the person liable shall restore the damaged property to its original state, or pay compensation at the market price. If the victims suffer other serious losses, the person liable shall compensate for such losses.

Article 45 The limitation period for bringing an action claiming compensation for the damage done by the defect in a product is two years, counting from the date on which the party concerned knows of or should know of the infringement of his rights and interests.

The right to claim compensation for the damage done by the defective product shall be forfeited upon the expiry of a period of ten years from the date on which the defective product causing the damage is delivered to the first consumer, except where the clearly stated period of safe-use has not expired.

Article 46 For the purposes of this Law, "defect" means one that constitutes an unreasonable threat to personal safety or to safety of another person's property; where there are national or sectoral standards for ensuring human health, personal safety and safety of property to measure up to, 'defect' means failure to measure up to such standards.

Article 47 Where a civil dispute over product quality arises, the parties may seek settlement through negotiation or mediation. If the parties are not willing to do so, or if negotiation or mediation fails, they may apply to an arbitration institution for arbitration, as agreed upon between the parties; if the parties fail to reach an agreement for arbitration or the agreement is invalid, they may bring a suit directly before a people's court.

Article 48 The arbitration institution or the people's court may entrust a product quality inspection institution, as mentioned in Article 19 of this Law, with the inspection of a product quality.

## Chapter V Penalty Provisions

Article 49 Any producer or seller that produces or sells products not up to the relevant national or sectoral standards for ensuring human health, personal safety and safety of property shall be ordered to discontinue production or sale of such products, the products illegally produced or ready for sale shall be confiscated, he shall be fined a sum equal to the amount of but not more than three times the value of the products illegally produced or ready for sale (including those already sold and those not yet sold, the same hereinafter); the illegal gains, if any, shall also be confiscated; if the circumstances are serious, the business license shall be revoked; if a crime is constituted, criminal responsibility shall be investigated according to law.

Article 50 Where a producer or a seller mixes impurities or imitations into a product, or substitutes a fake product off as a genuine one, or a defective product for a quality one, or passes a substandard product off as an up-to-date one, he shall be ordered to discontinue production or sale, the products illegally produced or for sale shall be confiscated, he shall be fined not less than 50 percent of but not more than three times the value of the products illegally manufactured or ready for sale; the unlawful earnings, if any, shall be confiscated; if the circumstances are serious, the business license shall be revoked; if a crime is constituted, criminal responsibility shall be investigated in accordance with law.

Article 51 Any producer that produces products which are eliminated by State orders or any seller that sells products which are eliminated and the sale of which is stopped by State orders shall be ordered to discontinue production or sale of such products, the products illegally produced or for sale shall be confiscated, and a fine not more than the value of the products illegally produced or for sale shall be imposed; the illegal gains, if any, shall be confiscated; if the circumstances are serious, the business license shall be revoked.

Article 52 Any seller that sells expired or deteriorated products shall be ordered to discontinue sale, the products for illegal sale shall be confiscated, and fine not more than twice the value of the products for illegal sale shall be imposed; the illegal gains, if any, shall be confiscated; if the circumstances are serious, the business license shall be revoked; if a crime is constituted, criminal liability shall be investigated in accordance with law.

Article 53 Anyone producer or seller that forges or fraudulently uses another producer's name and address, or forges or fraudulently uses authentication marks or other product quality marks shall be ordered to rectify, the products illegally produced or for sale shall be confiscated, a fine not more than the value of the products illegally produced or for sale shall be imposed; the illegal gains, if any, shall be confiscated; if the circumstances are serious; the business license shall be revoked.

Article 54 Where the marks of a product do not conform to the provisions of Article 27 of this Law, the producer or seller concerned shall be ordered to make rectification. Where the marks on a packed product do not conform to the provisions of sub-paragraphs (4) and (5) of Article 27 of this Law, if the circumstances are serious, the producer or seller concerned shall be ordered to discontinue production or sale of such products, and a fine not more than 30 percent of the value of the products illegally produced or for sale shall be imposed; the illegal gains, if any, shall be confiscated.

Article 55 A seller who sells products prohibited for sale as specified in the provisions from Article 49 to Article 53 of this Law presents sufficient evidence to show that he is ignorant of the fact that sale of the products is prohibited and gives true information about the source of the products may be given lighter or mitigated punishment.

Article 56 Any producer or seller that refuses to undergo supervision and inspection over product quality conducted in accordance with law shall be given a disciplinary warning and be ordered to rectify; if he refuses to rectify, he shall be ordered to discontinue operation for overhaul; if the circumstances are especially serious, his business license shall be revoked.

Article 57 Any product quality inspection institution or authentication body that forges an inspection result or issues an unauthentic certificate shall be ordered to rectify and be fined not less than 50,000 yuan but not more than 100,000 yuan, the persons who are directly in charge and the other persons who are directly responsible shall be fined not less than 10,000 yuan but not more than 50,000 yuan; the illegal gains, if any, shall be confiscated; if the circumstances are serious, the inspection institution or authentication body shall be disqualified for the job; if the a crime is constituted, criminal responsibility shall be investigated in accordance with law.

Any product quality inspection institution or authentication body that issues an untruthful inspection result or certificate and thus causes losses shall bear liability of compensation for the same amount of losses caused; if major losses are caused, the inspection institution or the authentication body shall be disqualified for the job.

Where a product quality authentication body that, in violation of the provisions of the second paragraph of Article 21 of this Law, fails to demand, as required by law, rectification with respect to a product which is not up to the standards for authentication but on which the authentication mark is used, or disqualify the product from using the mark, if losses are caused to consumers due to the fact that the product is not up to standard, the said body shall bear joint and several liability with the producer and the seller; if the circumstances are serious, the authentication body shall be disqualified for the job.

Article 58 Where a public organization or an intermediary agency undertakes to guarantee the quality of a product, if the product is not up to the quality standard as guaranteed and losses are caused to consumers, it shall bear joint and several liability with the producer and the seller of the product.

Article 59 Where false advertisements regarding product quality are published to cheat or mislead consumers, the advertiser shall be investigated for legal responsibility in accordance with the Advertisement Law of the People's Republic of China.

Article 60 The raw and supplementary material, packaging material and production tools specially used for the production of products as mentioned in Articles 49 and 51 of this Law or for the production of fake products shall be confiscated.

Article 61 Where a person who knows or should know that the manufacture or sale of a product is prohibited by this Law offers conveniences for the transportation, keeping and storage of such product, or offers technologies for the manufacture of the products, all his earnings therefrom shall be confiscated, and he shall be fined not less than 50 percent of but not more than three times the unlawful earnings; if a crime is constituted, he shall be investigated for criminal responsibility.

Article 62 Any operator in the service industry who uses in services the products prohibited for sale, as mentioned in the provisions from Articles 49 to Article 52 of this Law, shall be ordered to discontinue their use; those who know or should know that sale of the products they use is prohibited by this Law shall be punished in accordance with the provisions of this Law for the punishment of the seller of such products and on the basis of the value of the illegally used products (including those all ready used and those not yet used).

Article 63 Anyone who conceals, moves to other places, sells or destroy goods sealed up or seized by departments for supervision over product quality or administrative departments for industry and commerce shall be fined not less than the amount of but not more than three times the value of the said goods; the illegal gains, if any, shall be confiscated.

Article 64 If the property of a person who violates the provisions of this Law and who therefore shall bear the civil liability of compensation and is required to pay a fine, is insufficient for paying both the compensation and the fine, such person shall first bear the civil liability of compensation.

Article 65 Functionaries of the people's governments at various levels or of State organs who commit any of the following acts shall be given administrative sanctions an accordance with law; if the act constitutes a crime, criminal responsibility shall be investigated an accordance with law:

(1) shielding or conniving at violations of this Law committed in the process of manufacture or sale of products;

(2) divulging information to the parties who engage in production or sale activities in violation of the provisions of this Law and helping them to evade investigation and handling; or

(3) obstructing or interfering in the investigation and handling of the violations of this Law committed in the process of manufacture and sale of products conducted by departments for supervision over product quality or administrative departments for industry and commerce, and thus causing serious consequences.

Article 66 If a department for supervision over product quality, when conducting random checking, asks for samples in excess of the specifies amount or charges fees from the inspected, it shall be ordered by the department for supervision over product quality at a higher level or the supervisory organ to return the extra samples or the fees; if the circumstances are serious, the persons who are directly in charge and the other persons who are directly responsible shall be given administrative sanctions in accordance with law.



Article 67 If a department for supervision over product quality or any other State organ, in violation of the provisions of Article 25 of this Law, recommends to the public a manufacturer's product, or participates in business activities in the form of supervision over the manufacture or sale of products, it shall be ordered by its superior or the supervisory organ to rectify to offset the negative effect, and its unlawful earnings, if any, shall be confiscated; if the circumstances are serious, the persons who are directly in charge and the other persons who are directly responsible shall be given administrative sanctions in accordance with law.

If a product quality inspection institution commits the illegal activities mentioned in the preceding paragraph, it shall be ordered by the department for supervision over product quality to rectify to offset the negative effect, and its unlawful earnings, if any, shall be confiscated and it may also be fined not more than the amount of its unlawful earnings; if the circumstance are serious, it shall be disqualified for quality inspection.

Article 68 Any functionary of the department for supervision over product quality or of the administrative department for industry and commerce who abuses his power, neglects his duty, or engages in malpractices for personal gains, if a crime is constituted, shall be investigated for criminal responsibility in accordance with law; otherwise he shall be given administrative sanctions in accordance with law.

Article 69 Anyone who obstructs, by means of violence or intimidation, functionaries of the departments for supervision over product quality or of the administrative departments for industry and commerce from performing their duties according to law shall be investigated for criminal responsibility in accordance with law; anyone who prevents or obstructs, without resorting to violence or intimidation, the said functionaries from performing their duties shall be punished by the public security organs in accordance with the provisions of the Regulations on Administrative Penalties for Public Security.

Article 70 An administrative sanction involving revocation of business license, as provided for in this Law, shall be decided by the administrative department for industry and commerce, and the administrative sanctions, as provided for in the provisions from Articles 49 to Article 57 and in Articles 60 to 63, shall be decided by the department for supervision over product quality or the administrative department for industry and commerce within the scope of their functions and powers prescribed by the State Council. Where laws or administrative regulations provide otherwise as to the authorities exercising the power of administrative sanction, the provisions of such laws and administrative regulations shall apply.

Article 71 Products confiscated in accordance with the provisions of this Law shall be disposed of or handled by other means in accordance with the relevant regulations of the State.

Article 72 The value of the products mentioned in the provisions from Article 49 to Article 54, Articles 62 and 63 shall be calculated on the basis of the marked prices of the products illegally manufactured or for sale; where such prices are not available, it shall be calculated on the basis of the market prices for similar products.

## Chapter VI Supplementary Provisions

Article 73 Measures for supervision over the quality of military industrial products shall be formulated separately by the State Council and the Central Military Commission.

Where laws or administrative regulations provide otherwise as to the liability of compensation for damages caused by nucleus facilities or products, the provisions of such laws or regulations shall apply.

Article 74 This Law shall go into effect as of September 1, 1993.

## **Pricing Law of the People's Republic of China**

Adopted at the 29th Meeting of the Standing Committee of the Eighth National People's Congress on December 29, 1997 and promulgated by Order No. 92 of the President of the People's Republic of China on December 29, 1997

### Contents

Chapter I General Provisions

Chapter II Pricing by the Manager

Chapter III Pricing by the Government

Chapter IV Control of the General Price Level

Chapter V Supervision over and Inspection of Pricing

Chapter VI Legal Liability

Chapter VII Supplementary Provisions

### Chapter I General Provisions

Article 1 This Law is enacted in order to standardize pricing, give play to the role of pricing in rationally allocating resources, stabilize the general level of market price, protect the lawful rights and interests of consumers and managers and promote the sound development of a socialist market economy.

Article 2 This Law shall be applicable to pricing within the territory of the People's Republic of China.

Pricing as mentioned in this Law covers commodity prices and service prices.

Commodity prices refer to the prices of the various types of tangible products and intangible assets.

Service prices refer to the fees charged for the various types of paid services.

Article 3 The State institutes and gradually improves a mechanism under which prices are formed mainly by the market under the macro-economic control. Prices shall be set in compliance with the law of value, the prices of most commodities and services shall be regulated by the market and the prices of a very small number of commodities and services shall be guided or fixed by the government.

The prices regulated by the market refer to the prices set by the manager on his own and formed through market competition.

The managers as mentioned in this Law refer to the legal persons, other organizations and individuals engaging in production, dealing in commodities or providing paid services.

Prices guided by the government refer to the prices set by managers under the guidance of the government departments in charge of pricing or other relevant departments that, in accordance with the provisions of this Law, shall decide on the standard prices and their floating ranges within the limits of their powers for pricing and the scope of applicable commodities and services.

Prices fixed by the government refer to the prices set by the government departments in charge of pricing and other relevant departments in accordance with the provisions of this Law and within the limits of their powers for pricing and the scope of applicable commodities and services.

Article 4 The State supports and promotes fair, open and lawful market competition, maintains normal order of pricing and exercises administration, supervision and necessary control over pricing.

Article 5 The competent department for pricing under the State Council shall hold unified responsibility for the work of pricing throughout the country. The other relevant departments under the State Council shall, within the scope of their functions and duties, be responsible for the work respectively.

The competent departments for pricing under the local people's governments at or above the county level shall be responsible for the work of pricing within their administrative regions. The other relevant departments of the said people's governments shall, within the scope of their functions and duties, be responsible for the work respectively.

## Chapter II Pricing by the Manager

Article 6 Commodity prices and service prices, with the exception of those whose prices shall be guided or fixed by the government under Article 18 of this Law, shall be regulated by the market, that is, fixed by the manager on his own in accordance with this Law.

Article 7 The manager shall follow the principles of fairness, lawfulness and good faith in fixing prices.

Article 8 Production and management cost and the market supply-and-demand situation constitute the basis for the manager to fix prices.

Article 9 The manager shall work hard to improve production and management, reduce production and management cost, provide consumers with commodities and services at reasonable prices, and reap lawful profits through market competition.

Article 10 The manager shall establish and perfect the internal price management system in light of his operational conditions, accurately record and verify the production and management cost of commodities and services; he may not resort to deceit.

Article 11 The manager shall enjoy the following rights in pricing:

- (1) to fix on his own prices that are regulated by the market;
- (2) to fix prices within the range stipulated by the government for its guidance prices;
- (3) to set prices for trial sales of new products coming within the scope of products whose prices are guided or fixed by the government, with the exception of specially designated products; and
- (4) to inform against or accuse infringements on his right to fix prices on his own according to law.

Article 12 In pricing, the manager shall abide by laws and regulations, accept the prices guided or fixed by the government according to law and carry out the statutory intervention and emergency measures regarding prices.

Article 13 In selling or purchasing commodities and providing services, the manager shall, as required by the government departments in charge of pricing, clearly mark the prices and clearly indicate the name, origin of production, specifications, grade, valuation unit and price of a commodity or service item, charging standards and other related particulars.

The manager may not sell commodities at a premium or charge any fees that are not clearly indicated.

Article 14 The manager may not commit any of the following illegitimate acts in pricing:

- (1) colluding with others to manipulate the market price, thus harming the lawful rights and interests of other managers or consumers;
- (2) besides disposing of perishable, seasonal and overstocked commodities at reduced prices according to law, dumping commodities at prices lower than production cost in order to drive out rivals or monopolize the market, thus disrupting normal production and operational order and impairing the interests of the State or the lawful rights and interests of other managers;
- (3) fabricating and spreading information about price hikes and forcing up prices, thus stimulating excessive commodity price hikes;
- (4) using false or misleading prices to deceive consumers or other managers into transacting a deal with him;
- (5) while providing the same commodities or services, employing price discrimination against other managers with equal transaction conditions;
- (6) forcing up or forcing down prices in disguised form by raising or lowering grades when purchasing or selling commodities or providing services;
- (7) making exorbitant profits in violation of the provisions of laws and regulations; or

(8) other illegitimate acts in pricing prohibited by laws and administrative rules and regulations.

Article 15 The various types of intermediate organizations shall abide by the provisions of this Law in collecting charges for the paid services they provide, unless otherwise provided in laws.

Article 16 In selling imported commodities and purchasing export commodities, the manager shall observe the relevant provisions in this Chapter so as to help maintain domestic market order.

Article 17 Organizations of different trades shall abide by laws and regulations concerning prices, enhance self-discipline with regard to prices and accept guidance by the government departments in charge of pricing.

### Chapter III Pricing by the Government

Article 18 When necessary, the government may guide or fix the prices for the following commodities and services:

- (1) a very small number of commodities that have a vital bearing on the development of the national economy and the well-being of the people;
- (2) a small number of commodities for which resources are scarce;
- (3) commodities placed under natural monopoly;
- (4) important public utilities; and
- (5) important public welfare services.

Article 19 The limits of powers and the scope of applicable commodities and services for governments to guide or fix prices shall be based on the central and local pricing catalogues.

The central pricing catalogue shall be compiled and revised by the competent department for pricing under the State Council and published upon approval of the State Council.

The local pricing catalogues shall be compiled by the competent departments for pricing under the people's governments of provinces, autonomous regions and municipalities directly under the Central Government within the limits of their powers for pricing and the scope of applicable commodities and services defined in the central pricing catalogue, which, after being examined and approved by the said people's governments, shall be submitted to the competent department for pricing under the State Council for examination and approval before being published.

No local people's governments at levels below the people's governments of provinces, autonomous regions and municipalities directly under the Central Government may compile pricing catalogues.

Article 20 The competent department for pricing and other relevant departments under the State Council shall set government guidance prices and government fixed prices within the limits of their powers for pricing and the scope of applicable commodities and services defined in the central pricing catalogue; among the government guidance prices and government fixed prices, those for important commodities and services shall be set with the approval of the State Council, as required by the regulations.

The competent departments for pricing and other relevant departments under the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall set government guidance prices and government fixed prices for their own regions within the limits of their powers for pricing and the scope of applicable commodities and services defined in the local pricing catalogues.

The people's governments of cities and counties may, as authorized by the people's governments of provinces, autonomous regions and municipalities directly under the Central Government, set government guidance prices and government fixed prices for their own regions within the limits of their powers for pricing and the scope of applicable commodities and services defined in the local pricing catalogues.

Article 21 Government guidance prices and government fixed prices shall be set on the basis of the average cost of relevant commodities or services, the market supply and demand situation, the requirements of the national economic and social development and tolerance of the community and within a reasonable price disparity between purchase and sale, between wholesale and retail sale, between regions and between seasons.

Article 22 Before setting government guidance prices and government fixed prices, the government departments in charge of pricing and other relevant departments shall carry out investigation into prices and costs and listen to the suggestions of consumers, managers and other parties concerned.

When the government departments in charge of pricing are carrying out investigation into prices and costs before setting government guidance prices and government fixed prices, the units concerned shall truthfully report the situation and provide the necessary account books, documents and other material.

Article 23 For the setting of government guidance prices and government fixed prices for public utilities, public welfare services and commodities under natural monopoly that have a bearing on the immediate interests of the masses, a system for evidentiary hearing shall be established which shall be presided over by the government departments in charge of pricing and at which suggestions of consumers, managers and the other parties concerned shall be solicited and expounded as to their necessity and feasibility.

Article 24 The government guidance prices and government fixed prices, after being set, shall be made known to the consumers and managers by the department that sets the prices.

Article 25 The scope of applicable commodities and services under government guidance prices and government fixed prices and the price level shall be readjusted at the right moment on the

basis of the economic mechanism, within the limits of powers for pricing and in accordance with the procedures specified.

The consumers and managers may make proposals for readjustment of government guidance prices and government fixed prices.

#### Chapter IV Control of the General Price Level

Article 26 Stabilizing the general level of market prices is an important goal for the State macro-economic policy. On the basis of the need for the development of the national economy and tolerance of the community, the State sets the target of control over the general level of market prices, incorporates it into the plan for national economic and social development and has it achieved by comprehensively applying policies and measures concerning currency, finance, investment and import and export.

Article 27 The government may establish a system for reserving important commodities and set up a price regulating fund to control prices and stabilize the market.

Article 28 To meet the needs of price regulation and control, the government departments in charge of pricing shall establish a system for monitoring prices to monitor changes in the prices of important commodities and services.

Article 29 When the market purchasing prices for grain and other important farm products set by the government are too low, the government may assign protective prices and take appropriate economic measures to ensure the adoption of such prices.

Article 30 When the prices of important commodities and services rise noticeably or are likely to do so, the State Council or the people's governments of provinces, autonomous regions and municipalities directly under the Central Government may adopt intervention measures for some of the commodities and services, such as setting the price differential rates or profit rates and ceiling prices, introducing the markup declaration system and the system for putting readjusted prices on record.

When adopting the intervention measures provided for in the preceding paragraph, the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall report the matter to the State Council for the record.

Article 31 When anomalous situations such as violent fluctuation arise in the general level of market prices, the State Council may adopt emergency measures nationwide or in some regions for temporarily centralizing the price-fixing powers and freezing part or all of the prices.

Article 32 When the situations under which intervention measures and emergency measures need be adopted in accordance with the provisions of Articles 30 and 31 of this Law ease, such measures shall immediately be relinquished.



## Chapter V Supervision over and Inspection of Pricing

Article 33 The competent departments for pricing under the people's governments at or above the county level shall supervise and inspect pricing according to law and, in accordance with the provisions of this Law, impose administrative penalties for illegal acts related to pricing.

Article 34 When conducting supervision over and inspection of pricing, the government departments in charge of pricing may exercise the following functions and powers:

- (1) inquiring the parties or persons concerned and asking them to provide certifying papers and other material related to their illegal pricing;
- (2) examining and duplicating account books, bills, vouchers, documents and other material related to illegal pricing, and checking banking material related to illegal pricing;
- (3) inspecting money and property related to illegal pricing, and when necessary, ordering the parties concerned to suspend relevant business; and
- (4) first registering, according to law, for preservation of evidence which may possibly be missing or may be hard to obtain later on, and which parties or persons concerned may not transfer, conceal or destroy.

Article 35 When accepting supervision and inspection by the government department in charge of pricing, the manager shall provide true account books, bills, vouchers, documents and other material needed for supervision and inspection.

Article 36 Officials of the government departments in charge of pricing may not use the material or other particulars lawfully obtained for any other purposes than the ones for price control conducted according to law, and they may not divulge the business secrets of the parties concerned.

Article 37 Consumers' organizations, employees' price supervision organizations, neighborhood committees, villagers' committees and consumers shall have the right to supervise pricing. The government departments in charge of pricing shall give full play to the masses' role of supervision over pricing.

The media shall have the right to conduct supervision over pricing by public opinion.

Article 38 The government departments in charge of pricing shall establish a system for reporting against illegal pricing.

All units and individuals shall have the right to report against illegal pricing. The government departments in charge of pricing shall encourage such reporters and be responsible to keep secrets for them.

## Chapter VI Legal Liability

Article 39 Any manager who refuses to accept government guidance prices or government fixed prices or the statutory intervention and emergency measures shall be ordered to make amends, his illegal gains shall be confiscated and may also be fined not more than five times his illegal gains; if he has no illegal gains, he may be fined, if the circumstances are serious, he shall be ordered to suspend business for rectification.

Article 40 Any manager who commits any of the acts listed in Article 14 of this Law shall be ordered to make amends, his illegal gains shall be confiscated and he may also be fined not more than five times his illegal gains; if he has no illegal gains, he shall be given a disciplinary warning and may also be fined; if the circumstances are serious, he shall be ordered to suspend business for rectification, or his business license shall be revoked by the administrative department for industry and commerce. If otherwise provided in relevant laws regarding penalties and penalty imposing organs for the acts listed in Article 14 of this Law, those provisions may be applied.

If the acts listed in Subparagraphs (1) and (2) of Article 14 of this Law are of a national nature, they shall be confirmed by the competent department for pricing under the State Council; those which are of a regional nature at or below the provincial level shall be confirmed by the competent departments for pricing under the people's governments of provinces, autonomous regions and municipalities directly under the Central Government.

Article 41 Any manager who causes overpayment by consumers or other managers due to his illegal pricing shall return the overpaid money; if damage is caused, he shall bear liability of compensation according to law.

Article 42 Any manager who violates the provisions on clearly marking prices shall be ordered to set it right, his illegal gains shall be confiscated and he may also be fined not more than 5,000 yuan.

Article 43 Any manager who refuses to suspend business as ordered, or transfers, conceals or destroys the money and property registered for preservation according to law shall be fined not less than one time but not more than three times the gains derived from business or the value of the money and property transferred, concealed or destroyed.

Article 44 Whoever refuses to provide material needed for supervision and inspection, as required by the regulations, or provides false material, shall be ordered to make amends and be given a disciplinary warning; if he fails to do so within the time limit, he may be fined.

Article 45 Any local people's government or any relevant department under it that, in violation of the provisions of this Law, sets or readjusts prices by overstepping the limits of its powers for pricing or the scope of applicable commodities and services defined or refuses to implement the statutory price intervention and emergency measures shall be ordered to make amends and a notice of criticism may also be circulated; the persons who are directly in charge and the other persons who are directly responsible for the offence shall be given administrative sanctions according to law.

Article 46 Officials in charge of pricing who divulge State or business secrets or who abuse their powers, indulge in malpractices for selfish ends, neglect their duties, demand and accept bribes, if the offence constitutes a crime, shall be investigated for criminal responsibility according to law; otherwise, they shall be given sanctions according to law.

## Chapter VII Supplementary Provisions

Article 47 State administrative organs shall collect fees according to law, keep under strict control the items upon which charges are levied, and restrict the scope of such items and standardize the rates. Specific measures regarding charges shall be drawn up separately by the State Council.

Interest rates, exchange rates, premium rates, securities and futures prices shall be governed by the provisions of the relevant laws and administrative rules and regulations, other than this Law.

Article 48 This Law shall go into effect as of May 1, 1998.

# **Law of the People's Republic of China on the People's Bank of China**

Adopted at the Third Session of the Eighth National People's Congress on March 18, 1995, promulgated by Order No. 46 of the President of the People's Republic of China on March 18, 1995, and amended in accordance with the Decision on Amending the Law of the People's Republic of China on the People's Bank of China adopted at the 6th Meeting of the Standing Committee of the Tenth National People's Congress on December 27, 2003

## Contents

Chapter I General Provisions

Chapter II Organization Structure

Chapter III The Renminbi

Chapter IV Business Operations

Chapter V Financial Supervision and Control

Chapter VI Financial Affairs and Accounting

Chapter VII Legal Responsibility

Chapter VIII Supplement Provisions

## Chapter I General Provisions

Article 1 This Law is enacted in order to define the status and make clear the functions and responsibilities of the People's Bank of China, ensure the correct formulation and implementation of the monetary policies of the State, establish and perfect a macro-control system through a central bank and maintain financial stability.

Article 2 The People's Bank of China is the central bank of the People's Republic of China.

The People's Bank of China shall, under the leadership of the State Council, formulate and implement monetary policies, guard against and eliminate financial risks, and maintain financial stability.

Article 3 The aim of monetary policies shall be to maintain the stability of the value of the currency and thereby promote economic growth.

Article 4 The People's Bank of China shall perform the following functions and responsibilities:

- (1) to promulgate and carry out the orders and regulations related to its functions and responsibilities;
- (2) to formulate and implement monetary policies in accordance with law;
- (3) to issue Renminbi ( RMB ) and control its circulation;
- (4) to supervise and administer the inter-bank lending market and the inter-bank bond market;
- (5) to exercise control of foreign exchange and supervise and administer the inter-bank foreign exchange market;
- (6) to supervise and administer the gold market;
- (7) to hold, administer and manage the State foreign exchange reserve and gold reserve;
- (8) to manage the State Treasury;
- (9) to maintain the normal operation of the system for making payments and settling accounts;
- (10) to guide and make plans for the fight against money laundering in the banking industry, and to be responsible for monitoring the use of the funds earmarked for the fight against money laundering;
- (11) to be responsible for statistics, investigation, analysis and forecasting concerning the banking industry;
- (12) to engage in relevant international banking operations in its capacity as the central bank of the State; and
- (13) other functions and responsibilities prescribed by the State Council.

To implement monetary policies, the People's Bank of China may carry out financial operations in accordance with the relevant provisions of Chapter IV of this Law.

Article 5 The People's Bank of China shall report its decisions to the State Council for approval concerning the annual money supply, interest rate, foreign exchange rates and other important matters specified by the State Council before they are implemented.

The People's Bank of China shall immediately implement decisions on monetary policies for matters other than those specified by the State Council for the record.

Article 6 The People's Bank of China shall submit to the Standing Committee of the National People's Congress work reports concerning matters of monetary policies and the operations of the banking industry.

Article 7 The People's Bank of China shall, under the leadership of the State Council, implement monetary policies, perform its functions and carry out its business operations independently according to law and be free from intervention by local governments, government departments at various levels, public organizations or individuals.

Article 8 All capital of the People's Bank of China is invested by the State and owned by the State.

Article 9 The State Council shall establish a coordinating mechanism for financial supervision and administration. The specific measures therefor shall be formulated by the State Council.

## Chapter II Organizational Structure

Article 10 The People's Bank of China shall have a Governor and a certain number of Deputy Governors.

The candidate for the Governor of the People's Bank of China shall be nominated by the Premier of the State Council and decided by the National People's Congress; when the National People Congress is not in session, the Governor shall be decided by the Standing Committee of the National People's Congress and appointed or removed by the President of the People's Republic of China. The Deputy Governors of the People's Bank of China shall be appointed or removed by the Premier of the State Council.

Article 11 The People's Bank of China shall practice a system wherein the Governor shall assume overall responsibility. The Governor shall direct the work of the People's Bank of China, the Deputy Governors shall assist the Governor in his or her work.

Article 12 The People's Bank of China shall establish a monetary policy committee, whose functions, composition and working procedures shall be prescribed by the State Council and reported to the Standing Committee of the National People's Congress for the record.

The monetary policy committee of the People's Bank of China shall play an important role in the State macro-control and the formulation and adjustment of monetary policies.

Article 13 The People's Bank of China shall establish branches as its representative organs in light of the need of performing its functions and responsibilities and exercise unified leadership and administration with respect to its branches.

The branches of the People's Bank of China shall, as authorized by the People's Bank of China, maintain financial stability in their respective districts and handle relevant business operations.

Article 14 The Governor, Deputy Governors and other staff members of the People's Bank of China shall scrupulously abide by their duties; they may not abuse their power or conduct malpractice for private ends and they may not assume concurrent positions in any other banking institutions, enterprises or foundations.

Article 15 The Governor, Deputy Governors and other staff members of the People's Bank of China shall safeguard State Secrets according to law and be obligated to safeguard the secrets of the banking institutions and parties concerned with their implementation of their functions and responsibilities.

### Chapter III The Renminbi

Article 16 The legal tender of the People's Republic of China is the Renminbi (RMB). When Renminbi is used to repay all public or private debts within the territory of the People's Republic of China, no units or individuals may refuse to accept it.

Article 17 The unit of the Renminbi is the yuan and the units of the fractional currency of the Renminbi are the jiao and the fen.

Article 18 The Renminbi shall be printed and issued solely by the People's Bank of China.

When putting forth a new Renminbi issue, the People's Bank of China shall make known to the public the issuing date, face values, designs, patterns and specifications.

Article 19 It is prohibited to counterfeit or alter Renminbi. It is prohibited to sell or purchase counterfeit or altered Renminbi. It is prohibited to transport, hold or use counterfeit or altered Renminbi. It is prohibited to deliberately destroy or damage the Renminbi. It is prohibited to illegally use the patterns of Renminbi in propaganda materials, publications or other commodities.

Article 20 No units or individuals may print or sell promissory notes as substitutes for Renminbi to circulate on the market.

Article 21 The damaged or soiled Renminbi shall be exchanged in accordance with the regulations of the People's Bank of China, which shall also be responsible to recall and destroy such Renminbi.

Article 22 The People's Bank of China shall establish a Renminbi issue treasuries at its branches. The subsidiary issue treasuries shall, in allocating Renminbi issue fund, act on the order of allocation from their superior treasury. No units or individuals may use the issue fund in violation of regulations.

### Chapter IV Business Operations

Article 23 To implement monetary policies, the People's Bank of China may apply the following monetary policy instruments:

- (1) to require a financial institution of the banking industry to place a deposit reserve at a prescribed ratio;
- (2) to fix the base interest rates for the central bank;
- (3) to handle rediscount for financial institutions of the banking industry that have opened accounts in the People's Bank of China;

(4) to provide loans for commercial banks;

(5) to deal in State bonds, other government bonds, and financial bonds and foreign exchange on the open market; and

(6) other monetary policy instruments decided by the State Council.

When applying the monetary policy instruments listed in the preceding paragraph to implement monetary policies, the People's Bank of China may work out specific requirements and procedures.

Article 24 The People's Bank of China shall manage the State treasury in accordance with laws and administrative rules and regulations.

Article 25 The People's Bank of China may, on behalf of the financial department under the State Council, issue to financial institutions, and honour State bonds and other government bonds.

Article 26 The People's Bank of China may open accounts for financial institutions of the banking industry as needed, but may not allow them to overdraw.

Article 27 The People's Bank of China shall organize or assist in organizing a clearing system among financial institutions of the banking industry, coordinate the efforts of such institutions in matters of clearing and provide services in this regard. The specific measures therefor shall be formulated by the People's Bank of China.

The People's Bank of China shall, in conjunction with the banking regulatory authority under the State Council, formulate regulations on payment and clearing.

Article 28 The People's Bank of China may, as required by the implementation of monetary policies, determine the amounts, term, interest rates and forms of loans extended to commercial banks, however, the maximum term of loans shall not exceed one year.

Article 29 The People's Bank of China may not make an overdraft for the government, and may not directly subscribe or underwrite State bonds or other government bonds.

Article 30 The People's Bank of China may not provide loans to the local governments or government departments at various levels, to non-banking institutions, other units or individuals, with the exception of the specific non-banking institutions as decided by the State Council.

The People's Bank of China may not provide guaranty for any unit or individual.

## Chapter V Financial Supervision and Control

Article 31 The People's Bank of China shall, in accordance with law, monitor the operation of the financial markets, conduct macro-control of such markets and promote their coordinated development.



Article 32 The People's Bank of China shall have the power to inspect and supervise the following activities of the financial institutions and other units and individuals:

- (1) implementation of the regulations for control of deposit reserve;
- (2) activities related to the special loans of the People's Bank of China;
- (3) implementation of the regulations for control of Renminbi;
- (4) implementation of the regulations for control of the inter-bank lending market and the inter-bank bond market;
- (5) implementation of the regulations for control of foreign exchange;
- (6) implementation of the regulations for control of gold;
- (7) management of the State Treasury on behalf of the People's Bank of China;
- (8) implementation of the regulations for control of clearing; and
- (9) implementation of the regulations against money laundering.

The special loan mentioned in the preceding paragraph are loans granted, upon decision by the State Council, by the People's Bank of China for special purposes.

Article 33 The People's Bank of China may, according to the need to implement monetary policies and maintain financial stability, propose that the banking regulatory authority under the State Council inspect and supervise the financial institutions of the banking industry. The said authority shall, within thirty days from the date it receives the proposal, make a reply.

Article 34 When financial institutions of the banking industry have difficulties in making payment that may trigger off financial risks, the People's Bank of China shall, with a view to maintaining financial stability, have the power to inspect and supervise the financial institutions of the banking industry with the approval of the State Council.

Article 35 The People's Bank of China shall, according to the need to fulfill its functions and responsibilities, have the power to demand the financial institutions of the banking industry to submit the necessary balance sheets, statements of profit and other financial and accounting reports, statistical reports and information.

The People's Bank of China, the banking regulatory authority under the State Council and the other financial regulatory institutions under the State Council shall establish a mechanism to share supervisory information.

Article 36 The People's Bank of China shall be responsible for compiling unified statistics and accounting statements from the national banking system and shall publish them in accordance with relevant regulations of the State.

Article 37 The People's Bank of China shall establish and perfect system for its own examination and inspection and strengthen its own supervision and administration.

## Chapter VI Financial Affairs and Accounting

Article 38 The People's Bank of China shall exercise independent control over its financial budget.

The budget of the People's Bank of China shall be incorporated in the central budget after it has been examined and verified by the financial department under the State Council and the implementation thereof shall be subject to supervision of the financial department under the State Council.

Article 39 The People's Bank of China shall, after withdrawing funds for its general reserve at a proportion determined by the financial department under the State Council, turn over to the State treasury the entire net profit remaining from its income in an accounting year minus its expenditures in the same period.

Losses sustained by the People's Bank of China shall be made up by appropriations from the State treasury.

Article 40 The financial receipts and payments and accounting affairs of the People's Bank of China shall be governed by laws, administrative regulations and unified State financial and accounting systems and be subject to the auditing and supervision conducted, in accordance with law, separately by the audit institution and the financial department under the State Council.

Article 41 The People's Bank of China shall, within three months after the end of every accounting year, compile balance sheets of its assets, statements of profit and loss and relevant financial and accounting reports, prepare its annual report and publish them in accordance with relevant regulations of the State.

The fiscal year of the People's Bank of China begins on the first day of January and ends on the thirty-first day of December of the Gregorian calendar.

## Chapter VII Legal Responsibility

Article 42 Anyone who counterfeits or alters Renminbi, sells counterfeit or altered Renminbi or knowingly transports counterfeit or altered Renminbi, which is serious enough to constitute a crime, shall be investigated for criminal responsibility in accordance with law; if the case is not serious enough to constitute a crime, he shall be put in detention for not more than 15 days and fined not more than 10,000 yuan by a public security organ.

Article 43 Anyone who buys counterfeit or altered Renminbi or knowingly holds or uses counterfeit or altered Renminbi, which is serious enough to constitute a crime, shall be investigated for criminal responsibility in accordance with law; if the case is not serious enough to

constitute a crime, he shall be put in detention for not more than 15 days and fined not more than 10,000 yuan by a public security organ.

Article 44 If anyone illegally uses the patterns of Renminbi in propaganda materials, publications or other commodities, the People's Bank of China shall order him to set it right and shall destroy the illegally used patterns of Renminbi, confiscate the illegal gains and impose a fine of not more than 50,000 yuan.

Article 45 If anyone prints or sells promissory notes as substitutes for Renminbi to circulate on the market, the People's Bank of China shall order him to cease his illegal act and impose a fine of not more than 200,000 yuan.

Article 46 Where in relevant laws and administrative regulations there are provisions governing punishment for violations in respect of the activities as are listed in Article 32 of this Law, punishment shall be meted out in accordance with those provisions; where in such laws and administrative regulations there are no provisions governing such punishment, the People's Bank of China shall, on the merits of each case, give a disciplinary warning, confiscate the unlawful gains, or if the unlawful gains exceed 500,000 yuan, shall, in addition, impose a fine of not less than the amount of such gains but not more than five times that amount; if there are no unlawful gains or if such gains are less than 500,000 yuan, it shall impose a fine of not less than 500,000 yuan but not more than 2,000, 000 yuan. The director or senior manager who is directly in charge or any other person who is directly responsible shall be given a disciplinary warning and be fined not less than 50,000 yuan but not more than 500,000 yuan. If a crime is constituted, criminal responsibility shall be investigated in accordance with law.

Article 47 If any party refuses to accept the administrative punishment, he may institute an administrative lawsuit in accordance with the Administrative Procedure Law of the People's Republic of China.

Article 48 If the People's Bank of China commits any of the following acts, the persons directly in charge and other persons directly responsible for the offense shall be subject to administrative sanctions according to law; if the case constitutes a crime, the offenders shall be investigated for criminal responsibility according to law:

- (1) to provide a loan in violation of the provisions in the first paragraph of Article 30;
- (2) to provide guaranty for a unit or individual; or
- (3) to use the issue fund without authorization.

If any of the acts specified in the preceding paragraph results in losses, the persons directly in charge and other persons directly responsible for the offense shall be partially or wholly liable for the losses.

Article 49 If a local government or a government department at any level, a public organization or an individual forcibly demands the People's Bank of China or its staff member to provide a loan or a guaranty in violation of the provisions in Article 30, the persons directly in charge and other persons who are directly responsible for the offense shall be subject to administrative sanctions in

accordance with the law; if the case constitutes a crime, the offenders shall be investigated for criminal responsibility according to law; if losses are caused, the offenders shall be partially or wholly liable for the losses.

Article 50 If any staff member of the People's Bank of China divulges State secrets or the business secrets he knows, which is serious enough to constitute a crime, he shall be investigated for criminal responsibility according to law; if the case is not serious enough to constitute a crime, he shall be subject to administrative sanction according to law.

Article 51 If any staff member of the People's Bank of China commits embezzlement, accepts bribes, conducts malpractices for personal ends, abuses his power or neglects his duty, which is serious enough to constitute a crime, he shall be investigated for criminal responsibility according to law; if the case is not serious enough to constitute a crime, he shall be subject to administrative sanction according to law.

## Chapter VIII Supplementary Provisions

Article 52 For purposes of this law, the financial institutions of the banking industry are financial institutions established within the territory of the People's Republic of China that take in deposits from the general public, including, among others, commercial banks, urban credit cooperatives and rural credit cooperatives, and policy banks.

The provisions of this Law pertaining to financial institutions of the banking industry are applicable to the assets management companies, trust and investment companies, financial companies and financial leasing companies established within the territory of the People's Republic of China and other financial institutions established with the approval of the banking regulatory authority under the State Council.

Article 53 This Law shall be effective on the date of promulgation.

## **Law of the People's Republic of China on Commercial Banks**

Adopted at the 13th Meeting of the Standing Committee of the Eighth National People's Congress on May 10, 1995, promulgated by Order No. 47 of the President of the People's Republic of China on May 10, 1995, and amended in accordance with the Decision of the Standing Committee of the National People's Congress on Amending the Law of the People's Republic of China on Commercial Banks adopted at the Sixth Meeting of the Standing Committee of the Tenth National People's Congress on December 27, 2003

### Contents

#### Chapter I General Provisions

#### Chapter II Establishment and Organizational Structure of Commercial Banks

#### Chapter III Protection of depositors

#### Chapter IV Basic Rules for Loans and Other Business Operations

#### Chapter V Financial Affairs and Accounting

#### Chapter VI Supervision and Control

#### Chapter VII Assumption of Control and Termination

#### Chapter VIII Legal Responsibility

#### Chapter IX Supplementary Provisions

#### Chapter I General Provisions

Article 1 This Law is enacted in order to protect the lawful rights and interests of commercial banks, depositors and other clients, to standardize the behavior of commercial banks, to raise the quality of credit assets, to strengthen supervision and control, to ensure the stable and sound operation of commercial banks, to maintain financial order and to promote the development of the socialist market economy.

Article 2 For the purposes of this Law, the term "commercial banks" means enterprise legal persons that are established in conformity with this Law and the Company Law of the People's Republic of China and that take in deposits from the general public, grant loans, handle settlements, etc.

Article 3 Commercial banks may engage in some or all of the following business operations:

(1) taking in deposits from the general public;

- (2) granting short-term, medium-term and long-term loans;
- (3) handling domestic and foreign settlements;
- (4) handling the acceptance and discounting of negotiable instruments;
- (5) issuing financial bonds;
- (6) acting as an agent for the issue, honoring and underwriting of government bonds;
- (7) buying and selling government bonds and financial bonds;
- (8) engaging in interbank lending;
- (9) buying and selling foreign exchange and acting as an agent for the purchase and sale of foreign exchange;
- (10) engaging in the business of bank cards;
- (11) providing letter of credit services and guaranty;
- (12) acting as an agent for the receipt and payment of money and acting as an insurance agent;
- (13) providing safe deposit box services; and
- (14) other business operations as approved by the banking regulatory authority under the State Council.

The scope of business shall be specified in the articles of association of the commercial bank, and submitted to the banking regulatory authority under the State Council for approval.

Upon approval of the People's Bank of China, commercial banks may engage in the business of the settlement and sale of foreign exchange.

Article 4 The business operations of commercial banks shall be governed by the principles of safety, liquidity and efficiency. Commercial banks shall make their own decisions regarding their business operations, take responsibility for their own risks, assume sole responsibility for their profits and losses and exercise self-restriction.

Commercial banks shall, pursuant to law, conduct business operations without interference from any unit or individual.

Commercial banks shall independently assume civil liability with their entire legal person property.

Article 5 Commercial banks shall adhere to the principles of equality, voluntariness, fairness and good faith in business dealings with their clients.

Article 6 Commercial banks shall safeguard the lawful rights and interests of depositors against infringement by any unit or individual.

Article 7 In credit transactions, commercial banks shall strictly examine the credit-worthiness of a borrower and implement the system of guaranty in order to ensure that the loan is recovered on schedule.

Commercial banks shall be protected by law when they recover the principal of loans that have become due and the interest thereon from the borrowers in accordance with legal provisions.

Article 8 In business transactions, commercial banks shall abide by the relevant provisions of laws and administrative rules and regulations and may not harm the interests of the State or of the public.

Article 9 In business transactions, commercial banks shall abide by the principle of fair competition and may not engage in illegitimate competition.

Article 10 Commercial banks shall, in accordance with law, accept supervision and control of the banking regulatory authority under the State Council, but where laws provide that their relevant business operations shall be subject to supervision and control of other regulatory departments or bodies, such provisions shall prevail.

## Chapter II Establishment and Organizational Structure of Commercial Banks

Article 11 The establishment of commercial banks shall be subject to examination and approval by the banking regulatory authority under the State Council.

No unit or individual may engage in commercial banking business such as taking in deposits from the general public, and no unit may use the word "bank" in its name, without approval of the banking regulatory authority under the State Council.

Article 12 A commercial bank shall meet the following requirements for establishment: (1) having articles of association that conform to this Law and the Company Law of the People's Republic of China;

(2) having the minimum amount of registered capital as specified in this Law;

(3) having directors and other senior administrators with the expertise and experience in work commensurate with the positions they are holding;

(4) having a sound organizational structure and management system; and

(5) having the required place of business, security and precautionary measures and other facilities relevant to its business operations. The establishment of a commercial bank shall, in addition, meet other requirements of prudence.

Article 13 The minimum amount of registered capital required for the establishment of a national commercial bank shall be RMB one billion yuan. The minimum amount of registered capital required for the establishment of an urban commercial bank shall be 100 million yuan, and the

minimum amount of registered capital required for the establishment of a rural commercial bank shall be 50 million yuan. Registered capital shall be paid-up capital.

The banking regulatory authority under the State Council may readjust the minimum amount of registered capital on the basis of the requirements of prudent supervision and control, however, the readjusted amount may not be lower than the amount specified in the preceding paragraph.

Article 14 To establish a commercial bank, the applicant shall provide the following documents and information to the banking regulatory authority under the State Council: (1) a written application, in which the name, location, registered capital, scope of business, etc. of the proposed commercial bank are clearly stated ;

(2) a feasibility study; and

(3) other documents and information to be provided as specified by the banking regulatory authority under the State Council.

Article 15 If an application for establishing a commercial bank is found, after examination, to be in conformity with the provisions of Article 14 of this Law, the applicant shall complete an official application form and provide the following documents and information:

(1) a draft of the articles of association;

(2) the qualification certificates of the director or other senior administrator who is to hold office; (3) an investment verification certificate issued by a statutory investment verification organization;

(4) a list of the names, capital contributions and shares of shareholders;

(5) credit-worthiness certificates and relevant information concerning the shareholders that hold five percent or more of the registered capital each;

(6) business policies and plans;

(7) information concerning the place of business, security and precautionary measures and other facilities relevant to business operations; and

(8) other documents and information as specified by the banking regulatory authority under the State Council.

Article 16 A commercial bank the establishment of which has been approved shall be issued a permit for operation by the banking regulatory authority under the State Council and, on the strength of such permit, register with the administrative department of industry and commerce and obtain a business license from it.

Article 17 The organizational form and structure of commercial banks shall be governed by the Company Law of the People's Republic of China.

Commercial banks, established prior to the implementation of this Law, that do not entirely conform to the provisions of the Company Law of the People's Republic of China in organizational



form and structure may continue to be governed by previous regulations. The date on which the preceding paragraph shall apply to such commercial banks shall be specified by the State Council.

Article 18 A board of supervisors shall be established in a wholly State-owned commercial bank. Measures for forming the board of supervisors shall be formulated by the State Council.

The board of supervisors shall exercise supervision over the quality of credit assets of the wholly State-owned commercial bank, its assets-liabilities ratios and maintenance of and increase in the value of State-owned assets, and over the senior administrators of the commercial bank to see whether they violate any laws, administrative rules and regulations or the articles of association or commit any acts which harm the interests of the bank.

Article 19 Commercial banks may establish branches within and outside the People's Republic of China, in light of their needs in business operations. The establishment of such a branch shall be subject to examination and approval by the banking regulatory authority under the State Council. The establishment of branches within the People's Republic of China shall not be restricted by the administrative division of regions.

When a commercial bank establishes a branch within the People's Republic of China, it shall allocate operating funds in keeping with the scale of its business, in accordance with regulations. The sum total of operating funds allocated to all the branches may not exceed 60 percent of the total amount of the capital of the head office.

Article 20 To establish a branch of a commercial bank, the applicant shall submit the following documents and information to the banking regulatory authority under the State Council:

- (1) a written application, in which the name, amount of operating funds and scope of business of the proposed branch, the location of the head office and the branch, etc. are clearly stated;
- (2) the applicant's financial and accounting reports of the preceding two years; (3) the qualification certificates of the senior administrators who are to hold office;
- (4) business policies and plans;
- (5) information concerning the place of business, security and precautionary measures and other facilities relevant to business operations; and
- (6) other documents and information as specified by the banking regulatory authority under the State Council.

Article 21 A commercial bank's branch the establishment of which has been approved shall be issued a permit for operation by the banking regulatory authority under the State Council and, on the strength of such permit, register with the administrative department of industry and commerce and obtain a business license from it.

Article 22 With respect to their branches, commercial banks shall apply across the board a financial system of centralized accounting and centralized movement of funds, and of management at different levels.

Branches of commercial banks shall not have the status of a legal person and shall lawfully conduct their business operations within the scope authorized by their head offices, and their civil liability shall be assumed by their head offices.

Article 23 The banking regulatory authority under the State Council shall announce its approval of the establishment of commercial banks and their branches.

If a commercial bank or branch thereof fails, without good reason, to commence business more than six months after the date of obtaining its business license or, after commencing business, suspends business without authorization for six months or more in succession, the banking regulatory authority under the State Council shall revoke its permit for operation and make it known to the public.

Article 24 A commercial bank shall obtain the approval of the banking regulatory authority under the State Council for making any of the following changes:

- (1) change of name;
- (2) change in the registered capital;
- (3) change of location of the head office or a branch;
- (4) adjustment of the scope of business;
- (5) change of shareholders that hold five percent or more of the total amount of capital or shares each;
- (6) revision of the articles of association; or
- (7) changes in other matters as are governed by the regulations of the banking regulatory authority under the State Council.

When a director or a senior administrator is to be replaced, the qualifications of the substitute for the position shall be submitted to the banking regulatory authority under the State Council for examination.

Article 25 Division and merger of commercial banks shall be governed by the provisions of the Company Law of the People's Republic of China.

Division and merger of commercial banks shall be subject to examination and approval by the banking regulatory authority under the State Council.

Article 26 Commercial banks shall use their permits for operation in accordance with the provisions of laws and administrative rules and regulations. Forging, alteration, assigning, leasing out or lending of such permits is prohibited.

Article 27 None of the following persons may serve as a director or a senior administrator of a commercial bank:

- (1) persons who have been sentenced to criminal punishment for the crime of embezzlement, bribery, seizure or misappropriation of property or disruption of the public and economic order, or persons who have been deprived of their political rights for committing a crime;
- (2) directors of companies or enterprises, or factory directors or managers who have been subjected to bankruptcy liquidation due to mismanagement, and who bear personal liability for the bankruptcy;
- (3) legal representatives of companies or enterprises that had their business licenses revoked for breaking law, who bear personal liability therefor; and
- (4) persons with comparatively large amounts of overdue personal debts .

Article 28 Purchase by any unit or individual of five percent or more of the total amount of the shares of a commercial bank shall be subject to prior approval by the People's Bank of China.

### Chapter III Protection of Depositors

Article 29 In handling savings deposits for individuals, commercial banks shall adhere to the principles of voluntary deposit, unimpeded withdrawal, interest payment on deposits and confidentiality for the depositors.

Commercial banks shall have the right to refuse to answer the inquiries into and to refuse to freeze, deduct or transfer an individual's savings deposits-- as made or requested by any unit or individual, except where otherwise provided for by law.

Article 30 Commercial banks shall have the right to refuse to answer the inquiries into a unit's deposits by any other unit or individual, except where otherwise provided for by laws and administrative rules and regulations, and shall have the right to refuse to freeze, deduct or transfer a unit's deposits as requested by any other unit or individual, except where otherwise provided for by law.

Article 31 Commercial banks shall determine the interest rates on deposits in accordance with the upper and lower limits interest rates on deposits specified by the People's Bank of China and make them known to the public.

Article 32 Commercial banks shall place a deposit reserve with the People's Bank of China and maintain sufficient provision for payment, in accordance with the regulations of the People's Bank of China.

Article 33 Commercial banks shall guaranty, and may not delay or refuse, payment of the principal of deposits and the interest thereon.

### Chapter IV Basic Rules for Loans and Other Business Operations

Article 34 Commercial banks shall conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State.

Article 35 Before granting a loan, commercial banks shall strictly examine the borrower's purpose for the loan, ability to repay the loan, method of repayment, etc.

When granting a loan, commercial banks shall implement the system of separating the examination of a loan from the actual provision of the loan and the system of examination and approval at different levels.

Article 36 To obtain a loan from a commercial bank, a borrower shall provide a guaranty. The commercial bank shall strictly examine the surety's ability to repay the loan, the ownership and value of the mortgage or the collateral and the feasibility of realizing the right of mortgage or right of pledge.

If, after examination and appraisal by a commercial bank, a borrower's credit is found to be good, and the borrower is deemed truly able to repay the loan, the borrower need not provide a guaranty .

Article 37 For granting a loan, the commercial bank shall conclude a written contract with the borrower. The contract shall stipulate the type, purpose, amount and interest rate of the loan, the time limit for repayment, the method of repayment, liability for breach of contract and other matters deemed necessary by the parties.

Article 38 Commercial banks shall determine loan interest rate in accordance with the upper and lower limits for loan interest rates prescribed by the People's Bank of China.

Article 39 When granting a loan, commercial banks shall abide by the following provisions on the control of assets-liabilities ratios:

- (1) the capital adequacy ratio may not be lower than 8 percent;
- (2) the ratio of the outstanding of loans to the outstanding of deposits may not exceed 75 percent;
- (3) the ratio of the balance of floating assets to the balance of floating liabilities may not be lower than 25 percent;
- (4) the ratio of the outstanding of loans granted to the same borrower to the balance of the capital of the commercial bank may not exceed 10 percent; and
- (5) other provisions of the banking regulatory authority under the State Council concerning the control of assets-liabilities ratios.

If, after the implementation of this Law, the assets-liabilities ratios of a commercial bank established prior to the implementation of this Law are found not in conformity with the provisions of the preceding paragraph, the bank shall make it conform to the provisions of the

preceding paragraph within a certain time limit. The specific measures therefor shall be formulated by the State Council.

Article 40 Commercial banks may not grant fiduciary loans to their connections. The conditions for granting secured loans to their connections may not be more preferential than those for granting the same type of loans to other borrowers.

For the purposes of the preceding paragraph, the term “connections” means:

- (1) directors, supervisors, administrators and loan officers of the commercial bank and close relatives of such persons;
- (2) companies, enterprises and other economic organizations in which the persons mentioned in the preceding paragraph have invested or in which they hold senior administrative positions.

Article 41 No unit or individual may forcibly demand a commercial bank to grant a loan or to provide a guaranty. Commercial banks shall have the right to refuse to grant a loan or to provide a guaranty forcibly demanded by any unit or individual.

Article 42 Borrowers shall repay the loan principal and the interest thereon on schedule.

If a borrower fails to repay a secured loan upon maturity, the commercial bank shall lawfully have the right to require the surety to repay the loan principal and the interest thereon or the right to preferential compensation in respect of the collateral. Immovable property or stock rights obtained by a commercial bank through the exercise of the right of mortgage or the right of pledge shall be disposed of by it within two years from the date it obtains the same.

If a borrower fails to repay a fiduciary loan upon maturity, he shall bear liability in accordance with the provisions of the contract.

Article 43 No commercial banks may, within the territory of the People’s Republic of China, engage in trust investment or securities business, or invest in immovable property which is not for private use, in non-banking financial institutions or in enterprises, except where otherwise provided for in the regulations of the State.

Article 44 When handling matters of settlement such as acceptance or remittance of negotiable instruments or entrusted receipt of payment, etc., commercial banks shall encash the instruments and enter receipts and expenditures in their accounts within the specified time limits, and may not deliberately delay or withhold payment of bills and negotiable instruments or reject negotiable instruments in violation of regulations. Regulations relating to the time limits for encashing of instruments and entering of receipts and expenditures in the accounts shall be announced.

Article 45 To issue financial bonds or to raise loans from outside the People’s Republic of China, commercial banks shall first submit applications for approval in accordance with the provisions of laws and administrative rules and regulations.

Article 46 Inter-bank lending shall be carried out in adherence to the regulations of the People’s Bank of China. It is forbidden to use such loans for granting fixed assets loans or making investment.

Funds lent under such loans shall be limited to idle funds that remain after a sufficient reserve against deposit has been retained, sufficient provision for payment has been made and matured loans from the People's Bank of China have been repaid. Funds borrowed under such loans shall be used to make up deficiencies in the settlement of negotiable instruments and in the funds available for covering remittance differences with correspondent banks and to meet the temporary need for working capital.

Article 47 Commercial banks may not raise or lower interest rates in violation of regulations or use other improper means to take in deposits or grant loans.

Article 48 Enterprises and institutions may select for themselves the place of business of a commercial bank where to open a basic account for the day-to-day settlement of account transfers and for cash receipts and payments. They may not open more than one basic account.

No unit or individual may open an account in the name of an individual to deposit the funds of a unit therein.

Article 49 The business hours of commercial banks shall be such as to be convenient to clients and shall be announced. Commercial banks shall carry out business during announced business hours; they may not suspend business or shorten their business hours without authorization.

Article 50 In carrying out business operations and providing services, commercial banks shall charge commissions in accordance with relevant regulations. The items and rates for such commissions shall be specified by the banking regulatory authority under the State Council and the People's Bank of China based on their division of responsibilities, in conjunction with the department of pricing under the State Council respectively.

Article 51 Commercial banks shall preserve their financial and accounting statements, business contracts and other materials in accordance with relevant regulations of the State.

Article 52 Employees of commercial banks shall abide by laws and administrative rules and regulations and all other regulations for the control of business operations; they may not:

- (1) use their positions to demand, receive or accept bribes, or receive or accept rebates or commissions of any description in violation of State regulations;
- (2) use their positions to embezzle, misappropriate or seize money belonging to the bank or any client;
- (3) practise favoritism towards relatives or friends in granting loans or providing guaranty in violation of regulations;
- (4) hold a concurrent position in another economic organization; or
- (5) commit other acts in violation of laws, administrative rules and regulations or other regulations for the control of business operations.

Article 53 No employees of commercial banks may disclose State or business secrets that they come to know during their employment.

## Chapter V Financial Affairs and Accounting

Article 54 Commercial banks shall establish and perfect their own financial and accounting systems in accordance with laws, the uniform accounting system of the State and the relevant regulations of the banking regulatory authority under the State Council.

Article 55 Commercial banks shall, in accordance with relevant State regulations, truthfully record and give a complete account of their business activities and financial position, draw up annual financial and accounting reports and, without delay, submit them to the banking regulatory authority under the State Council, the People's Bank of China and the department of finance under the State Council. Commercial banks may not establish any account books in addition to statutory account books.

Article 56 Within three months after the end of every fiscal year, commercial banks shall announce their business results and audit reports for that year in accordance with the regulations of the banking regulatory authority under the State Council.

Article 57 Commercial banks shall, in accordance with relevant State regulations make allocations to a doubtful account reserve, in order to set off doubtful accounts.

Article 58 The fiscal year of commercial banks shall commence on January 1 and end on December 31 of the Gregorian calendar.

## Chapter VI Supervision and Control

Article 59 Commercial banks shall, in accordance with relevant regulations, formulate their own operating rules, and establish and perfect their systems for risk management and internal control.

Article 60 Commercial banks shall establish and perfect their own systems for examination and inspection of deposits, loans, settlements, doubtful accounts, etc.

Commercial banks shall conduct routine examination, inspection and supervision with respect to their branches.

Article 61 Commercial banks shall, in accordance with relevant regulations, submit to the banking regulatory authority under the State Council and the People's Bank of China their balance sheets, profit accounts and other financial, accounting and statistical statements and information.

Article 62 The banking regulatory authority under the State Council shall have the right at any time to carry out inspection of and exercise supervision over the deposits, loans, settlements, doubtful accounts, etc. of commercial banks, in accordance with the provisions of Chapters III, IV and V of this Law. When carrying out inspection and supervision, the inspectors and supervisors

shall produce their lawful identification papers. Commercial banks shall provide financial and accounting information, business contracts and other information concerning operation and management in compliance with the requirements of the banking regulatory authority under the State Council.

The People's Bank of China shall have the power to inspect and supervise the commercial banks in accordance with the provisions of Articles 32 and 34 of the Law of the People's Republic of China on People's Bank of China.

Article 63 Commercial banks shall, according to law, accept supervision by audit institutions through auditing.

## Chapter VII Assumption of Control and Termination

Article 64 When a commercial bank has suffered or will possibly suffer, credit crisis, thereby seriously affecting the interests of the depositors, the banking regulatory authority under the State Council may assume control over the bank.

The purposes of assumption of control are, through taking such measures as are necessary in respect of the commercial bank over which control is assumed, to protect the interests of the depositors and to enable the commercial bank to resume normal business. The debtor-creditor relationship with regard to a commercial bank over which control is assumed shall not change as a result of the assumption of control.

Article 65 The assumption of control shall be decided upon, and its implementation shall be arranged, by the banking regulatory authority under the State Council. In the decision made by the banking regulatory authority under the State Council to assume control shall be clearly stated the following particulars:

- (1) the name of the commercial bank over which control is to be assumed;
- (2) the reason for the assumption of control;
- (3) the organization that shall assume control; and
- (4) the period or time for the control.

The decision for the assumption of control shall be announced by the banking regulatory authority under the State Council.

Article 66 Control shall be assumed on the date of implementation of the decision to assume control.

Beginning on the date of assumption of control, the organization assuming control shall exercise the powers of operation and management of the commercial bank.



Article 67 The banking regulatory authority under the State Council may decide to extend the period of time for control upon expiration of the time specified. However, the maximum period of time for control shall be two years.

Article 68 The control shall be terminated under one of the following conditions:

- (1) when the period of time specified in the decision for control has expired or the extended period of time for control decided upon by the banking regulatory authority under the State Council has expired;
- (2) the commercial bank has already become able to resume normal business before expiration of the period of control; or
- (3) the commercial bank is merged or is lawfully declared bankrupt before expiration of the period of control.

Article 69 If a commercial bank has to be dissolved as a result of division, merger or the occurrence of a cause for dissolution as specified in the company's articles of association, it shall submit to the banking regulatory authority under the State Council an application for dissolution, which is to be accompanied with a statement of the reasons for dissolution and a plan for settlement of debts such as repaying of the principal of the deposits together with the interest thereon. The commercial bank shall be dissolved upon approval by the banking regulatory authority under the State Council.

If a commercial bank is to be dissolved, a liquidation team shall be established pursuant to law. The team shall, in accordance with the plan for settlement of debts, carry out liquidation and without delay pay debts such as the principal of the deposits and the interest thereon. The banking regulatory authority under the State Council shall supervise the process of liquidation.

Article 70 If a commercial bank is to be dissolved because its permit for operation is revoked, the banking regulatory authority under the State Council shall without delay arrange to establish a liquidation team pursuant to law, which shall, in accordance with the plan for settlement of debts, carry out liquidation and without delay pay debts such as the principal of the deposits and the interest thereon .

Article 71 If a commercial bank is unable to pay its debts as they fall due, a People's Court shall, after obtaining consent of the banking regulatory authority under the State Council, lawfully declare it bankrupt. If a commercial bank is declared bankrupt, the People's Court shall arrange for relevant authorities, such as the banking regulatory authority under the State Council, and relevant persons to establish a liquidation team, which shall carry out liquidation.

When liquidation is carried out after a commercial bank is declared bankrupt, payment of the principal of savings deposits of individuals and the interest thereon shall be given priority after the liquidation expenses, the wages owed to the employees and labor insurance premiums have been paid.

Article 72 Commercial banks shall terminate if dissolved, closed down or declared bankrupt.

## Chapter VIII Legal Responsibility

Article 73 A commercial bank shall assume liability for payment of default interest and other civil liability if the property of depositors or other clients is damaged as a result of the commercial bank's:

- (1) delay in or refusal of payment of the principal of a deposit and the interest thereon without good reason;
- (2) violation of regulations concerning matters of settlement such as acceptance of negotiable instruments, etc. by refusing to encash the instruments, refusing to enter receipts and expenditures in its accounts, deliberately delaying or withholding payment under bills or negotiable instruments, or rejecting negotiable instruments in violation of regulations;
- (3) illegal inquiries into, freezing, withholding or transfer of the savings deposits of individuals or the deposits of units; or
- (4) other acts in violation of this Law that cause damage to depositors or other clients.

If a commercial bank commits one of the acts specified in the preceding paragraph, it shall be instructed by the banking regulatory authority under the State Council to rectify and its unlawful gains shall be confiscated; if the unlawful gains exceed 50,000 yuan, it shall, in addition, be fined not less than the amount of such gains but not more than five times that amount; and if there are no unlawful gains or such gains are less than 50,000 yuan, it shall be fined not less than 50,000 yuan but not more than 500,000 yuan.

Article 74 If a commercial bank commits one of the following acts, it shall be instructed by the banking regulatory authority under the State Council to rectify; if there are unlawful gains, such gains shall be confiscated; if the unlawful gains exceed 500,000 yuan, it shall, in addition, be fined not less than the amount of such gains but not more than five times that amount; if there are no unlawful gains or such gains are less than 500,000 yuan, it shall be fined not less than 500,000 yuan but not more than 2,000,000 yuan; if the circumstances are particularly serious, or if the bank fails to rectify at the expiration of the time limit, the banking regulatory authority under the State Council may instruct it to suspend business for rectification or may revoke its business license; and if a crime is constituted, criminal responsibility shall be investigated according to law:

- (1) establishing a branch without approval;
- (2) dividing or merging without approval or, in violation of relevant regulations, failing to report for approval changes to be made;
- (3) raising or lowering interest rates in violation of relevant regulations or taking in deposits or granting loans by other illegitimate means;
- (4) leasing out or lending its business license;

- (5) buying and selling, or acting as an agent for the purchase and sale of, foreign exchange without approval;
- (6) buying or selling government bonds or issuing, buying or selling financial bonds without approval;
- (7) in violation of relevant State regulations, engaging in trust investment and the business of securities, investing in immovable property which is not for private use, or investing in non-banking financial institutions or enterprises ; and
- (8) granting fiduciary loans to its connections or granting guaranteed loans to its connections on conditions that are more preferential than those for granting the same to other borrowers.

Article 75 If a commercial bank commits one of the following acts, it shall be instructed by the banking regulatory authority under the State Council to rectify and, in addition, be fined not less than 200, 000 yuan but not more than 500,000 yuan; if the circumstances are particularly serious, or if the bank fails to rectify at the expiration of the time limit, the banking regulatory authority under the State Council may instruct it to suspend business for rectification or revoke its business license; and if a crime is constituted, criminal responsibility shall be investigated according to law: (1) refusing to accept, or hindering, inspection and supervision by the banking regulatory authority under the State Council; (2) providing financial and accounting reports, statements and statistical statements which are false or in which important facts are concealed; or (3) failing to observe the regulations governing the capital adequacy ratio, the ratio of deposits to loans, the asset liquidity ratio, the ratio concerning loans granted to the same borrower, or other regulations of the banking regulatory authority under the State Council relating to control of assets-liabilities ratio.

Article 76 If a commercial bank commits one of the following acts, it shall be instructed by the People's Bank of China to rectify; if there are unlawful gains, such gains shall be confiscated; if the unlawful gains exceed 500,000 yuan, it shall, in addition, be fined not less than the amount of such gains but not more than five times that amount; if there are no unlawful gains or such gains are less than 500,000 yuan, it shall be fined not less than 500,000 yuan but not more than 2,000,000 yuan; if the circumstances are particularly serious, or if the bank fails to rectify at the expiration of the time limit, the People's Bank of China may put forward a proposal that the banking regulatory authority under the State Council instruct it to suspend business for rectification or revoke its business license; and if a crime is constituted, criminal responsibility shall be investigated according to law: (1) engaging in the settlement and sale of foreign exchange without approval; (2) without approval, issuing, buying or selling financial bonds at inter-bank bond markets, or borrowing loans from abroad; or (3) in violation of relevant regulations, engaging in inter-bank lending. Article 77 If a commercial bank commits one of the following acts, it shall be instructed by the People's Bank of China to rectify and, in addition, be fined not less than 200, 000 yuan but not more than 500,000 yuan; if the circumstances are particularly serious, or if the bank fails to rectify at the expiration of the time limit, the People's Bank of China may put forward a proposal that the banking regulatory authority under the State Council instruct it to suspend business for rectification or revoke its business license; and if a crime is constituted, criminal responsibility shall be investigated according to law: (1) refusing to accept, or hindering,

inspection and supervision by the People's Bank of China; (2) providing financial and accounting reports, statements and statistical statements which are false or in which important facts are concealed; or (3) failing to place a deposit reserve in the proportion specified by the People's Bank of China.

Article 78 If a commercial bank commits one of the acts specified from Article 73 through Article 77 of this Law, the directors and senior administrators who are directly in charge and the other persons who are directly responsible shall be given disciplinary sanctions; and if a crime is constituted, criminal responsibility shall be investigated according to law.

Article 79 Any unit or individual that commits one of the following acts shall be instructed by the banking regulatory authority under the State Council to rectify, if there are unlawful gains, such gains shall be confiscated; if the unlawful gains exceed 50, 000 yuan, it shall, in addition, be fined not less than the amount of such gains but not more than five times that amount; and if there are no unlawful gains or such gains are less than 50,000 yuan, it shall be fined not less than 50,000 yuan but not more than 500,000 yuan: (1) using the word "bank" in its name without approval; (2) purchasing 5 percent or more of the total amount of the shares of a commercial bank without approval; or

(3) opening an account in the name of an individual to deposit the funds of the unit.

Article 80 If a commercial bank fails to submit the relevant documents and information to the banking regulatory authority under the State Council in accordance with relevant regulations, it shall be instructed by the said authority to rectify; and if it fails to rectify at the expiration of the time limit, it shall be fined not less than 100, 000 yuan but not more than 300, 000 yuan.

If a commercial bank fails to submit the relevant documents and information to the People's Bank of China in accordance with relevant regulations, it shall be instructed by the People's Bank of China to rectify; and if it fails to rectify at the expiration of the time limit, it shall be fined not less than 100, 000 yuan but not more than 300, 000 yuan.

Article 81 Any unit or individual, without approval of the banking regulatory authority under the State Council, establishes a commercial bank, or illegally takes in deposits from the general public or does so in disguised form, which is serious enough to constitute a crime, criminal responsibility shall be investigated according to law, and such a commercial bank shall be closed down by the banking regulatory authority under the State Council.

Any unit or individual that fabricates, counterfeits or transfers the business license of a commercial bank, which is serious enough to constitute a crime, criminal responsibility shall be investigated according to law.

Article 82 If a borrower uses fraudulent means to obtain a loan and a crime is constituted thereby, criminal responsibility shall be pursued according to law.

Article 83 Any unit or individual commits one of the acts specified in Articles 81 and 82 of this Law, which is not serious enough to constitute a crime, its/ his unlawful gains shall be confiscated by the banking regulatory authority under the State Council; if the unlawful gains exceed 500, 000

yuan, it / he shall, in addition, be fined not less than the amount of such gains but not more than five times that amount and; if there are no unlawful gains or such gains are less than 500,000 yuan, it / he shall be fined not less than 500,000 yuan but not more than 2,000,000 yuan.

Article 84 If an employee of a commercial bank, taking advantage of his duties, demands, receives or accepts bribes or, in violation of State regulations, receives or accepts rebates or commissions of any description, which is serious enough to constitute, criminal responsibility shall be investigated according to law; and if it is not serious enough to constitute a crime, a disciplinary sanction shall be imposed on him.

If anyone commits an act specified in the preceding paragraph and causes losses in granting a loan or providing a guaranty, the person shall be fully or partially liable for compensation.

Article 85 If an employee of a commercial bank, taking advantage of his duties, embezzles, misappropriates or takes into his possession money belonging to the bank or any client, which is serious enough to constitute a crime, criminal responsibility shall be investigated according to law; and if it is not serious enough to constitute a crime, a disciplinary sanction shall be imposed on him.

Article 86 If employees of a commercial bank cause losses by neglecting their duties in violation of the provisions of this Law, disciplinary measures shall be taken against them. If a crime is constituted, criminal responsibility shall be pursued according to law.

If anyone causes losses by practicing favoritism towards his relatives or friends in granting loans or providing guaranty in violation of regulations, the person shall be fully or partially liable for compensation.

Article 87 If employees of a commercial bank disclose State or business secrets that they come to know during their employment, disciplinary measures shall be taken against them. If a crime is constituted, criminal responsibility shall be pursued according to law.

Article 88 If any unit or individual forcibly demands a commercial bank to grant a loan or to provide a guaranty, disciplinary measures shall be taken against the leading members of the unit who are directly in charge and other persons of the unit who are directly responsible for the offense or the individual and, if losses are caused thereby, these persons shall be fully or partially liable for compensation.

If employees of a commercial bank fail to refuse to grant a loan or to provide a guaranty forcibly demanded by a unit or individual, disciplinary measures shall be taken against them and, if losses are caused thereby, they shall assume appropriate liability for compensation.

Article 89 If commercial banks violate the provisions of this Law, the banking regulatory authority under the State Council may, on the merits of each case, disqualify, for the positions for a certain period of time or even for the rest of their lives, the directors or senior administrators who are directly in charge, or prohibit the directors or senior administrators who are directly in charge and the other persons who are directly responsible from working in the banking industry for a certain period of time or even for the rest of their lives.

If the act committed by a commercial bank is not serious enough to constitute a crime, disciplinary warning shall be given to the director or senior administrator directly in charge or the other person directly responsible, and a fine of not less than 50, 000 yuan but not more than 500, 000 yuan shall be imposed. Article 90 If a commercial bank or its employees disagree with a decision on a punishment made by the banking regulatory authority under the State Council, or the People's Bank of China, they may institute proceedings with a People's Court in accordance with the provisions of the Administrative Procedure Law of the People's Republic of China.

## Chapter IX Supplementary Provisions

Article 91 Commercial banks established prior to the implementation of this Law, with approval granted in accordance with the regulations of the State Council, shall not be required to undergo examination and approval procedures again.

Article 92 The provisions of this Law shall be applicable to foreign-invested commercial banks, commercial banks of Chinese-foreign equity joint venture and branches of foreign commercial banks; and where other laws and administrative regulations provide otherwise, the provisions of those laws and administrative regulations shall prevail.

Article 93 In handling their business such as deposits, loans and settlements, urban credit cooperatives and rural credit cooperatives shall apply the relevant provisions of this Law.

Article 94 The relevant provisions of this Law shall be applicable to postal enterprises in handling relevant business of commercial banks.

Article 95 This Law shall go into effect as of July 1, 1995.

# **Law of the People's Republic of China on Regulation of and Supervision over the Banking Industry**

Adopted at the 6th Meeting of the Standing Committee of the Tenth National People's Congress on December 27, 2003; amended in accordance with the Decision of the Standing Committee of the Tenth National People's Congress on Amending the Law of the People's Republic of China on Regulation of and Supervision over the Banking Industry adopted at its 24th Meeting on October 31, 2006

## Contents

Chapter I General Provisions

Chapter II Regulatory Authority

Chapter III Regulatory and Supervisory Responsibilities

Chapter IV Supervisory Measures

Chapter V Legal Responsibility

Chapter VI Supplementary Provisions

## Chapter I General Provisions

Article 1 This law is enacted with a view to improving regulation of and supervision over the banking industry, standardizing such regulation and supervision, preventing and mitigating risks in the banking industry, protecting the lawful rights and interests of depositors and other customers, and promoting the sound development of the banking industry.

Article 2 The banking regulatory authority under the State Council shall be responsible for the regulation of and supervision over the financial institutions of the banking industry and their business operations throughout the country.

For purposes of this law, the financial institutions of the banking industry refer to the financial institutions established in the People's Republic of China that receive deposits from the general public, including, among others, commercial banks, urban credit cooperatives and rural credit cooperatives, and policy banks.

The provisions of this Law pertaining to the regulation of and supervision over the financial institutions of the banking industry are applicable to the regulation and supervision of the financial asset management companies, trust and investment corporations, finance companies and financial leasing companies established in the territory of the People's Republic of China and other

financial institutions established with the approval of the banking regulatory authority under the State Council.

The banking regulatory authority under the State Council shall, in accordance with the relevant provisions of this Law, regulate and supervise the financial institutions that, upon its approval, are established outside the People's Republic of China, as well as the business operations conducted abroad by the financial institutions mentioned in the preceding two paragraphs.

Article 3 The objectives of regulation of and supervision over the banking industry are to promote the lawful, sound and steady operation of the banking industry and preserve public trust in the industry.

The banking industry shall be regulated and supervised in such a way as to protect fair competition in the industry and increase the competitiveness of the industry.

Article 4 When exercising regulation and supervision, the banking regulatory authority shall follow the principles of law-abiding, openness, impartiality and efficiency.

Article 5 Performance of the duties of supervision in accordance with law by banking regulatory authority and its staff members engaged in supervision shall be protected by law. Local governments, government departments at various levels, public organizations and individuals shall not interfere.

Article 6 The banking regulatory authority under the State Council shall establish a mechanism with the People's Bank of China and other financial regulatory authorities under the State Council for sharing supervisory information.

Article 7 The banking regulatory authority under the State Council may establish a cooperative mechanism of supervision with the banking regulatory authorities in other countries or regions for cross-border supervision.

## Chapter II Regulatory Authority

Article 8 In light of the need to perform its duties, the banking regulatory authority under the State Council may set up local offices. It shall exercise unified leadership and administration of such offices.

The local offices of the banking regulatory authority under the State Council shall perform their supervisory duties within the scope authorized by the said authority.

Article 9 The staff members of the banking regulatory authority who are engaged in supervision shall have the professional knowledge and work experience commensurate with the positions they are holding.



Article 10 Staff members of the banking regulatory authority shall be devoted to their duties, act in accordance with law and be impartial and honest; they shall not take advantage of their positions to seek illegitimate benefits, or concurrently hold positions in enterprises such as financial institutions.

Article 11 Staff members of the banking regulatory authority shall, in accordance with law, guard State secrets, and it is incumbent upon them to guard the secrets of the financial institutions of the banking industry and of the parties subject to their supervision.

For exchanging supervisory information with the banking regulatory authorities of other countries and regions, the banking regulatory authority under the State Council shall make arrangements for preserving the confidentiality of information.

Article 12 The banking regulatory authority under the State Council shall make public its supervisory procedures, and establish a supervisory responsibility system and an internal supervisory system.

Article 13 Local governments and the relevant government departments at various levels shall cooperate with and provide assistance to the banking regulatory authority when the latter deals with risks confronted by financial institutions of the banking industry, investigates and handles violations of law in finance, and exercises supervision in other manners.

Article 14 The auditing, supervisory and other departments under the State Council shall, in accordance with the provisions of relevant laws, oversee the activities of the banking regulatory authority under the State Council.

### Chapter III Regulatory and Supervisory Responsibilities

Article 15 The banking regulatory authority under the State Council shall, in accordance with laws and administrative regulations, formulate and promulgate supervisory rules and regulations governing the financial institutions of the banking industry and their business activities.

Article 16 The banking regulatory authority under the State Council shall, in accordance with the requirements and procedures provided for in laws and administrative regulations, examine, before giving approval, the establishment, change, termination and business scope of financial institutions of the banking industry.

Article 17 Where an application is submitted for the establishment of a financial institution of the banking industry or where such an institution intends to replace a shareholder that holds more than the specified percentage of the total amount of capital or shares, the banking regulatory authority under the State Council shall examine the source of capital, financial strength, ability to replenish capital and integrity of the shareholders.

Article 18 The types of services offered by a financial institution of the banking industry within its business scope shall, in accordance with relevant regulations, be subject to examination and

approval by the banking regulatory authority under the State Council or be submitted to the said authority for the record. With regard to the types of services that are subject to examination and approval or to being put on record, the banking regulatory authority under the State Council shall, in accordance with relevant laws and administrative regulations, formulate regulations and make them known to the public.

Article 19 Without approval by the banking regulatory authority under the State Council, no institution or individual may establish a financial institution of the banking industry or engage in business activities of such an institution.

Article 20 The banking regulatory authority under the State Council shall exercise control of the qualifications for the positions of the directors and senior managers of the financial institutions of the banking industry. Specific measures in this regard shall be formulated by the banking regulatory authority under the State Council.

Article 21 The rules of prudent operation of the financial institutions of the banking industry shall be stipulated in laws or administrative regulations, and they may also be formulated by the banking regulatory authority under the State Council in accordance with relevant laws and administrative regulations.

The rules of prudent operation mentioned in the preceding paragraph shall cover, among other things, risk management, internal control, capital adequacy, asset quality, loan loss provisioning, risk concentration, connected transactions, and liquidity management of assets.

The financial institutions of the banking industry shall strictly observe the rules of prudent operation.

Article 22 The banking regulatory authority under the State Council shall, within a prescribed period of time, make a decision of approval or disapproval in writing in response to the following applications; if it makes a decision of disapproval, it shall explain the reasons why:

- (1) for the establishment of a financial institution of the banking industry, it is six months from the date it receives the application documents;
- (2) for the change or termination of a financial institution of the banking industry, for the business scope or for offering more types of services within the business scope, it is three months from the date it receives the application documents; and
- (3) for the examination of the qualifications of a director or senior manager, it is 30 days from the date it receives the application documents.

Article 23 The banking regulatory authority shall conduct off-site supervision of the business operations and risk profile of the financial institutions of the banking industry, for which it shall establish an information system, and analyse and assess the risk profile of such institutions.

Article 24 The banking regulatory authority shall conduct on-site inspection of the business operations and risk profile of the financial institutions of the banking industry.

The banking regulatory authority under the State Council shall formulate procedures for on-site inspection to standardize such inspection.

Article 25 The banking regulatory authority under the State Council shall supervise the financial institutions of the banking industry on a consolidated basis.

Article 26 With respect to the proposal made by the People's Bank of China for inspection of a financial institution of the banking industry, the banking regulatory authority under the State Council shall respond within 30 days from the date it receives the proposal.

Article 27 The banking regulatory authority under the State Council shall establish a rating system and an early-warning mechanism for supervision over the financial institutions of the banking industry, in order to determine, on the basis of the rating and risk profile of such institutions, the frequency and scope of on-site inspection of the institutions, as well as other supervisory measures that need to be taken.

Article 28 The banking regulatory authority under the State Council shall establish a system of post responsibility for identifying and reporting emergencies in the banking industry.

When it identifies any emergency that may lead to systemic risks in the banking industry and thus seriously jeopardize social stability, the banking regulatory authority shall immediately report the matter to the leading member of the banking regulatory authority under the State Council; the leading member shall, when deeming it necessary, immediately report to the State Council while informing the People's Bank of China, the finance department and other relevant departments under the State Council of the matter.

Article 29 The banking regulatory authority under the State Council shall, in conjunction with the People's Bank of China, the finance department and other relevant departments under the State Council, establish a system for coping with emergencies in the banking industry, including formulating contingency plans, designating institutions and staff members, specifying their responsibilities and the measures and procedures, in order to ensure that emergencies in the banking industry are handled in a timely and effective manner.

Article 30 The banking regulatory authority under the State Council shall be responsible for compiling, in a unified manner, statistics and reports of the financial institutions of the banking industry throughout the country and, in accordance with the relevant regulations of the State, publish the statistics and reports.

Article 31 The banking regulatory authority under the State Council shall guide and oversee the activities of the self-regulated organizations of the banking industry.

The self-regulated organizations of the banking industry shall submit their articles of association to the banking regulatory authority under the State Council for the record.

Article 32 The banking regulatory authority under the State Council may engage in international exchange and cooperation related to regulation of and supervision over the banking industry.

## Chapter IV Supervisory Measures

Article 33 The banking regulatory authority shall, in light of the need for performing its duties, have the power to require the financial institutions of the banking industry to submit, in accordance with relevant regulations, their balance sheets, profit statements, other financial accounting statements, statistical reports and information concerning business operations and management, as well as the audit reports prepared by certified public accountants.

Article 34 The banking regulatory authority may take the following measures to conduct on-site inspection, as required by prudent supervision:

- (1) to enter a financial institution of the banking industry for on-site inspection;
- (2) to interview staff members of a financial institution and require them to provide explanations on the matters under inspection;
- (3) to check and make copies of the financial institution's documents and materials related to the matters under inspection, and to seal up the documents and materials that are likely to be removed, concealed or destroyed; and
- (4) to examine the computer system with which the financial institution controls its business data.

On-site inspection shall be subject to approval by the leading member of the banking regulatory authority. For on-site inspection, there shall be no less than two inspectors, who shall produce their legal certificates and the written notification of inspection. Where there are less than two inspectors, or no legal certificates and written notification of inspection are produced, the financial institution shall have the right to refuse to accept inspection.

Article 35 The banking regulatory authority may, in light of the need for performing its duties, hold supervisory consultations with the directors and senior managers of a financial institution of the banking industry, asking them to explain the important matters concerning business operations and risk management.

Article 36 The banking regulatory authority shall instruct financial institutions of the banking industry to disclose, truthfully and in accordance with relevant regulations, to the public information, including, their financial statements, statements of risk management, changes in the directors and senior managers and other important matters.

Article 37 Where a financial institution of the banking industry violates the rules of prudent operation, the banking regulatory authority under the State Council or its office at the provincial level shall instruct it to rectify within a time limit; if it fails to comply at the expiration of the time limit, or the violation seriously threatens the sound and steady operation of the institution, and jeopardizes the lawful rights and interests of the depositors and other customers, the banking regulatory authority under the State Council or its office at the provincial level may, with the approval of the leading member, take the following measures, depending on the seriousness of the circumstances:

- (1) instructing it to suspend part of its business or ceasing to give approval to its starting of new businesses;
- (2) restricting the distribution of dividends and other returns;
- (3) restricting asset transfers;
- (4) instructing the holding shareholders to transfer their rights or restricting the rights of the shareholders concerned;
- (5) instructing the institution to replace the directors or senior managers or restricting their rights; and
- (6) ceasing to give approval to its establishment of new branches.

After rectification, the financial institution shall submit a report to the banking regulatory authority under the State Council or its office at the provincial level. After the said authority or office inspects the institution and accepts it as conforming to the rules of prudent operation, it shall, within three days after the date of acceptance, discontinue the measures prescribed in the preceding paragraph.

Article 38 Where a financial institution of the banking industry is experiencing or is likely to experience a credit crisis, thereby seriously jeopardizing the lawful rights and interests of depositors and other customers, the banking regulatory authority under the State Council may, in accordance with law, take over the institution or facilitate its restructuring. The take-over and restructuring shall be carried out in accordance with relevant laws and the regulations of the State Council.

Article 39 Where a financial institution of the banking industry operates in violation of laws or is not operated or managed properly, thereby seriously threatening financial order and undermining public interests unless it is closed, the banking regulatory authority under the State Council shall have the power to close it.

Article 40 Where a financial institution of banking industry is taken over, restructured, or closed, the banking regulatory authority under the State Council shall have the power to require the directors, senior managers and other staff members of the institution to perform their duties according to the requirements of the authority.

In the course of the take-over, restructuring or liquidation before the closure of the institution, the banking regulatory authority under the State Council may, with the approval of the leading member of the authority, take the following measures against the directors and senior managers who are directly in charge and the other staff members who are directly responsible:

- (1) where their departure from the People's Republic of China will cause heavy losses to the interests of the State, notifying the exit control authority of the need to prevent them, in accordance with law, from leaving the country; and
- (2) submitting an application to the judicial authority for prohibiting them from moving to other places or their transferring of their property, or for establishing other rights on their property.

Article 41 A banking regulatory authority shall, with the approval of the leading member of the banking regulatory authority under the State Council or of its office at the provincial level, have the power to inquire about the bank accounts of the financial institution of the banking industry suspected of violating laws in financial affairs, and the bank accounts of its staff members and connected parties; and may, with the approval of the said leading member, submit an application to the judicial authority for freezing the illegally obtained funds that are suspected of being about to be moved to other places or concealed.

Article 42 When the banking regulatory authority conducts inspection of the financial institutions of the banking industry according to law, it may, upon approval by the leading person of the banking regulatory authority at or above the level of the city divided into districts, take the following measures against the units and individuals that are involved in suspected violations of law:

- (1) to inquire the units or individuals concerned, requesting them to make explanations about the relevant matters;
- (2) to check or duplicate documents and materials related to financial and accounting statements and property registration; and
- (3) in the first place, to register and preserve the documents and materials that are likely to be removed, concealed, damaged or destroyed, or forged.

When the banking regulatory authority takes the measures specified in the preceding paragraph, it shall send not less than two investigators, who shall produce their legal papers and the written notification of investigation. Where there are less than two investigators, or the investigators fail to produce their legal papers and the written notification of investigation, the units and individuals in question shall have the right to refuse to accept the investigation. When the measures are adopted in accordance with law, the units and individuals concerned shall cooperate with the investigators, give truthful explanations about the relevant matters and provide related documents and materials, and they shall not refuse to cooperate with the investigators, obstruct investigation, or conceal facts.

## Chapter V Legal Responsibility

Article 43 Any staff member of the banking regulatory authority engaged in supervision commits any of the following acts shall be given administrative sanctions according to law; and if a crime is constituted, he shall be investigated for criminal responsibility in accordance with law:

- (1) in violation of relevant regulations, examining and giving approval to the establishment, change or termination of a financial institution of the banking industry, or its business scope or the services it offers within its business scope;

- (2) in violation of relevant regulations, conducting on-site inspection of a financial institution of the banking industry;
- (3) failing to report an emergency in accordance with the provisions in Article 28 of this Law;
- (4) in violation of relevant regulations, inquiring about bank accounts or submitting an application for freezing funds;
- (5) in violation of relevant regulations, taking measures against or penalizing a financial institution of the banking industry;
- (6) conducting investigation of a relevant unit or individual in violation of the provisions in Article 42 of this Law; and
- (7) other acts such as abuse of power and neglect of duties.

Any staff member of the banking regulatory authority engaged in supervision and administration who commits embezzlement, accepts bribes or divulges State secrets, business secrets or individual privacy, which constitutes a crime, shall be investigated for criminal responsibility according to law; and if the case is not serious enough to constitute a crime, he shall be given an administrative sanction according to law.

Article 44 Where a financial institution of the banking industry is established without authorization, or the business activities of financial institutions are illegally engaged in, the banking regulatory authority under the State Council shall outlaw such an institution and such business activities. If a crime is constituted, criminal responsibility shall be investigated according to law; if the case is not serious enough to constitute a crime, the unlawful gains shall be confiscated by the banking regulatory authority under the State Council; if the unlawful gains exceed RMB 500,000 yuan, a fine of not less than the amount of the unlawful gains but not more than five times that amount shall, in addition, be imposed; and if there are no unlawful gains or the amount of such gains is less than 500,000 yuan, a fine of not less than 500,000 yuan but not more than 2,000,000 yuan shall be imposed.

Article 45 Where a financial institution of the banking industry commits one of the following acts, it shall be instructed by the banking regulatory authority under the State Council to rectify; if there are unlawful gains, such gains shall be confiscated; if the unlawful gains exceed 500,000 yuan, it shall, in addition, be fined not less than the amount of such gains but not more than five times that amount ; if there are no unlawful gains, or such gains are less than 500,000 yuan, it shall be fined not less than 500,000 yuan but not more than 2,000,000 yuan; if the circumstances are particularly serious, or if the institution fails to rectify within the prescribed period of time, the banking regulatory authority under the State Council may instruct it to suspend business for rectification or revoke its business license; if a crime is constituted, the institution shall be investigated for criminal responsibility according to law:

- (1) establishing a branch without approval;
- (2) making changes or terminating business operations without approval;

(3) in violation of relevant regulations, engaging in business activities for which no approval is obtained or which are not put on record; and

(4) in violation of relevant regulations, raising or lowering interest rates on deposits or loans.

Article 46 Where a financial institution of the banking industry commits one of the following acts, the banking regulatory authority under the State Council shall instruct it to rectify and shall, in addition, impose on it a fine of not less than 200,000 yuan but not more than 500,000 yuan; if the circumstances are particularly serious, or if the institution fails to rectify within the prescribed period of time, the said authority may instruct it to suspend business for rectification or revoke its business license; if a crime is constituted, the institution shall be investigated for criminal responsibility according to law:

(1) appointing directors or senior managers without subjecting their qualifications for the positions to examination;

(2) refusing to accept or obstructing the off-site supervision or on-site inspection;

(3) providing statements, reports, documents or materials that are false or conceal important facts;

(4) failing to disclose information to the public in accordance with relevant regulations;

(5) violating the rules of prudent operation to a serious extent; and

(6) refusing to enforce the measures as provided for in Article 37 of this Law.

Article 47 Where a financial institution of the banking industry fails to provide statements, reports, documents or materials in accordance with relevant regulations, the banking regulatory authority shall instruct it to rectify. If it fails to comply within the prescribed period of time, it shall be fined not less than 100,000 yuan but not more than 300,000 yuan.

Article 48 Where a financial institution of the banking industry violates laws, administrative regulations or regulations of the State governing regulation and supervision of the banking industry, the banking regulatory authority may, in addition to the penalties specified in Articles 44 through 47 of this Law, take the following measures, depending on the seriousness of the circumstances:

(1) to instruct the financial institution to impose disciplinary sanctions on the directors and senior managers who are directly in charge and the other persons who are directly responsible;

(2) if the case is not serious enough to constitute a crime, to give disciplinary warnings to the directors and senior managers who are directly in charge and the other persons who are directly responsible and impose on them each a fine of not less than 50,000 yuan but not more than 500,000 yuan; and

(3) to disqualify the directors and senior managers who are directly in charge for a specified period of time or for life, or to prohibit them and the other persons who are directly responsible from working in the banking industry for a specified period of time or for life.



Article 49 A person who obstructs the inspection or investigation conducted by staff members of the banking regulatory authority according to law shall be given an administrative penalty for public security by a public security organ according to law; if the case constitutes a crime, he shall be investigated for criminal responsibility according to law.

#### Chapter VI Supplementary Provisions

Article 50 Where with regard to the regulation of and supervision over the policy banks and asset management companies established in the territory of the People's Republic of China, laws and administrative regulations provide otherwise, the provisions there shall prevail.

Article 51 Where with regard to the regulation of and supervision over the wholly foreign-funded financial institutions, Chinese-foreign joint venture financial institutions and branches of foreign financial institutions of the banking industry that are established in the territory of the People's Republic of China, laws and administrative regulations provide otherwise, the provisions there shall prevail.

Article 52 This Law shall go into effect as of February 1, 2004.

# **Law of the People's Republic of China on Funds for Investment in Securities**

Adopted at the 5th Meeting of the Standing Committee of the Tenth National People's Congress on October 28, 2003 and promulgated by Order No.9 of the President of the People's Republic of China on October 28, 2003

## Contents

Chapter I General Provisions

Chapter II Fund Managers

Chapter III Fund Custodians

Chapter IV Raising of Capital

Chapter V Trading of Fund Units

Chapter VI Subscription and Redemption of Fund Units

Chapter VII Operation of Funds and Disclosure of Information

Chapter VIII Modification and Termination of a Fund Contract and Liquidation of Fund Assets

Chapter IX Rights of the Holders of Fund Units and Exercise of the Rights

Chapter X Supervision and Regulation

Chapter XI Legal Responsibility

Chapter XII Supplementary Provisions

## Chapter I General Provisions

Article 1 This Law is enacted in order to regulate the activities in respect of investment of funds in securities, protect the lawful rights and interests of investors and related parties, and promote the healthy development of investment of funds in securities and the securities market.

Article 2 This Law is applicable to the raising of capital for investment in securities by openly selling fund units within the territory of the People's Republic of China (hereinafter referred to as funds, for short), which are managed by fund managers, placed in the custody of fund custodians, and used, in the interest of the holders of fund units, for investment in securities in the form of portfolio. With respect to matters which are not covered by the provisions of this Law, the

provisions of the Trust Law of the People's Republic of China, the Securities Law of the People's Republic of China and other relevant laws and administrative regulations shall apply.

Article 3 The rights and obligations of fund managers, fund custodians and holders of fund units shall be agreed on in the fund contracts concluded in accordance with this Law.

Fund managers and fund custodians shall perform their entrusted duties in accordance with this Law and the provisions of the fund contracts. Holders of fund units shall share benefits and risks in proportion to the number of units they hold.

Article 4 In investment of funds in securities the principles of voluntariness, fairness, honesty and good faith shall be adhered to, and the interests of the State and the public shall not be harmed.

Article 5 In a fund contract the mode of operation of the fund shall be specified. There may be closed-end funding, open-end funding and other modes.

A fund that is operated in the closed-end mode (hereinafter referred to as closed-end fund, for short) means that during the term of the fund contract the approved total sum of the fund units is fixed and shall remain unchanged and that the fund units may be traded on any stock exchange established in accordance with law, but that the holders of the fund units shall not apply for redemption of the units.

A fund that is operated in the open-end mode (hereinafter referred to as open-end fund, for short) means that the total sum of the fund units is not fixed and that the units may be subscribed for or redeemed at the time and place prescribed in the fund contract.

The measures for selling, trading, subscribing for and redeeming the units of the funds that are operated in other modes shall be formulated by the State Council separately.

Article 6 The assets of a fund shall be made independent of the assets owned by the fund manager or the fund custodian. The fund manager and the fund custodian shall not include the assets of the fund in their own assets.

The property or returns obtained by fund managers or fund custodians through managing or using the fund assets or by other means shall be included in the fund assets.

Where a fund manager or a fund custodian goes into liquidation as a result of being dissolved, or being closed down or declared bankrupt according to law, or for other reasons, the assets of the fund shall not be deemed to be part of his assets for liquidation.

Article 7 The creditor's rights of a fund shall not be used to offset the debts incurred by the fund manager's or the fund custodian's own assets; and the creditor's rights of one fund may not be used to offset the debts of another fund.

Article 8 No compulsory measures shall be taken against the assets of a fund where debts are not incurred because of the assets of the fund themselves.

Article 9 In managing and using fund assets, fund managers and fund custodians shall conscientiously fulfill their duties and perform their obligations to be honest, keep good faith, and be prudent and diligent.

Persons engaged in the fund business shall, in accordance with law, obtain professional qualifications in this field, abide by laws and administrative regulations, and strictly observe professional ethics and the code of conduct.

Article 10 Fund managers, fund custodians and institutions selling fund units may establish trade associations in order to maintain strict self-discipline and co-ordinate relationship in the trade, provide services for the trade and promote development of the trade.

Article 11 The securities regulatory authority under the State Council shall, in accordance with law, regulate the activities in respect of investment of funds in securities.

## Chapter II Fund Managers

Article 12 A fund manager shall be a fund management company established in accordance with law.

A fund manager shall be subject to examination and approval by the securities regulatory authority under the State Council.

Article 13 For establishment, a fund management company shall meet the following requirements and be subject to approval by the securities regulatory authority under the State Council:

- (1) it has articles of association which comply with the provisions of this Law and of the Company Law of the People's Republic of China;
- (2) its registered capital is not less than RMB100 million yuan and is paid up in cash;
- (3) the major shareholders have good managerial achievements to their credit and enjoy popular reputation in the securities business, securities investment consultancy, the management of trust assets, or the management of other financial assets, have no law-breaking record in the three preceding years, and have each a registered capital not less than 300 million yuan ;
- (4) the number of staff who have obtained the professional qualifications for the fund business reaches the quorum;
- (5) it has the business premises, security facilities and other facilities relating to the fund management business which satisfy the relevant requirements;
- (6) it has a perfect internal auditing and monitoring system and a perfect risk control system; and

(7) other requirements prescribed by laws and administrative regulations and requirements prescribed by the securities regulatory authority under the State Council with the approval of the State Council.

Article 14 The securities regulatory authority under the State Council shall ,within six months counted from the date it accepts an application for the establishment of a fund management company, examine the application in accordance with the requirements specified in Article 13 of this Law and the principle of prudent regulation, make a decision on whether to approve or disapprove the application, and notify the applicant accordingly; and if it disapproves the application, it shall explain the reasons why.

Where a fund management company intends to establish a branch, amend its articles of association, or make other vital changes, it shall submit an application to the securities regulatory authority under the State Council for approval. The securities regulatory authority under the State Council shall, within sixty days from the date it accepts the application, make a decision on whether to approve or disapprove the application and notify the applicant accordingly; and if it disapproves the application, it shall explain the reasons why.

Article 15 None of the following persons shall serve in the fund business under any fund manager:

- (1) persons who have been subjected to criminal punishment for the crime of embezzlement, bribery, dereliction of duty or property violation or for the crime of undermining the order of the socialist market economy;
- (2) directors, supervisors, factory directors, managers and other senior managerial persons who, due to their mismanagement, are personally responsible for the bankruptcy liquidation of the companies or enterprises for which he worked, or who, due to their violation of law, are personally responsible for the revocation of the business licenses of the companies or enterprises for which they worked, where no more than five years have elapsed since the date the bankruptcy liquidation of such companies or enterprises is completed or the date the business licenses are revoked;
- (3) persons who are encumbered with a relatively large amount of personal debts that are overdue;
- (4) employees of fund managers, fund custodians, stock exchanges, securities companies, securities registration and settlement institutions, futures exchanges, futures brokerage firms or other institutions and State functionaries, who have been dismissed because of illegal conduct;
- (5) lawyers, certified public accountants, employees of assets evaluation institutions and verification institutions and investment consultancy professionals who have been disqualified or whose licenses have been revoked because of illegal conduct; and
- (6) other persons who are prohibited from engaging in the fund business under relevant laws and administrative regulations.

Article 16 The managers and other senior managers of a fund manager shall be well-versed in laws and administrative regulations concerning investment in securities and shall possess the

qualifications for the fund business and have at least three years' working experience related to the positions they are holding.

Article 17 The appointment and replacement of a manager or other senior manager of a fund manager shall be reported to the securities regulatory authority under the State Council for examination and approval in accordance with the qualifications for the post as prescribed by this Law and other relevant laws and administrative regulations.

Article 18 The director, supervisor, manager or other employee of a fund manager shall not take up any post in a fund custodian or another fund manager and shall not engage in any securities trading or other activities to the detriment of the fund assets or the interests of the holders of fund units.

Article 19 A fund manager shall perform the following duties:

- (1) raising capital in accordance with law; and selling, subscribing for, redeeming and registering fund units, or entrusting another institution approved by the securities regulatory authority under the State Council to do the same on its behalf;
- (2) completing procedures for the registration of funds;
- (3) separately managing and keeping separate accounts of the assets of different funds under its management, and investing in securities;
- (4) in accordance with the provisions in the fund contract, deciding on plans for distributing returns of the fund and distributing the same among the holders of fund units promptly;
- (5) auditing fund accounts and preparing financial and accounting reports of the fund;
- (6) preparing interim and annual fund reports;
- (7) calculating and announcing the net value of the fund assets and deciding on the subscription and redemption prices of fund units;
- (8) handling matters of disclosure of information in relation to the management of fund assets;
- (9) convening general meetings of the holders of fund units;
- (10) maintaining records, account books, statements and other related materials concerning the management of fund assets;
- (11) exercising, in the name of the fund manager, the right of litigation or taking other legal actions on behalf of the holders of fund units; and
- (12) other duties prescribed by the securities regulatory authority under the State Council.

Article 20 A fund manager shall not commit the following acts:

- (1) mixing its own assets or another person's assets with the fund assets to invest in securities;
- (2) unfairly treating the assets of different funds under its management;

- (3) making use of fund assets to seek benefit for a third party other than the holders of fund units;
- (4) in breach of relevant regulations, committing itself to make profits for the holders of fund units and bear their losses; and
- (5) other acts prohibited by the securities regulatory authority under the State Council in accordance with the relevant laws and administrative regulations.

Article 21 The securities regulatory authority under the State Council shall, on the strength of its authority, instruct the fund manager to make rectification or disqualify it for the fund management if:

- (1) it grossly violates laws or regulations;
- (2) it ceases to meet the requirements specified in Article 13 of this Law; or
- (3) it is found in other circumstances as prescribed by laws and administrative regulations.

Article 22 The duties of a fund manager shall be terminated if:

- (1) it is disqualified for fund management according to law;
- (2) it is discharged by the holders of fund units at a general meeting;
- (3) it closes down in accordance with law or is dissolved or declared bankrupt according to law; or
- (4) it is found in other circumstances as prescribed by the fund contract.

Article 23 Where the duties of a fund manager is terminated, a new fund manager shall, within six months, be selected and appointed by the holders of fund units at a general meeting; and before the appointment of a new fund manager, the securities regulatory authority under the State Council shall appoint a provisional fund manager.

Where the duties of a fund manager is terminated, the fund manager shall properly keep the materials regarding fund management and shall complete the procedures for the transfer of fund management without delay, and the new or provisional fund manager shall likewise take over fund management.

Article 24 Where the duties of a fund manager is terminated, a public accounting firm shall, in accordance with relevant regulations, be appointed to audit the fund assets, and it shall announce the audit results and, at the same time, submit them to the securities regulatory authority under the State Council for the record.

### Chapter III Fund Custodians

Article 25 A fund custodian shall be a commercial bank which has been established in accordance with law and has obtained the qualifications for fund custody.

Article 26 To apply for fund custodian qualifications, the applicant shall meet the following requirements and shall be subject to examination and approval by the securities regulatory authority under the State Council and the banking regulatory authority under the State Council:

- (1) its net assets and its capital adequacy ratio are in conformity with relevant regulations;
- (2) it has a department specially established for fund custody;
- (3) the number of staff who have obtained professional qualifications for the fund business reaches the quorum;
- (4) it meets the requirements for the safe custody of fund assets;
- (5) it has a safe and efficient system for clearance and settlement;
- (6) it has the business premises, security facilities and other facilities relating to the business of fund custody which satisfy the relevant requirements;
- (7) it has a perfect internal auditing and monitoring system and a perfect risk control system; and
- (8) other requirements prescribed by laws and administrative regulations or prescribed by the securities regulatory authority under the State Council or the banking regulatory authority under the State Council with the approval of the State Council.

Article 27 The provisions of Articles 15 and 18 of this Law shall be applicable to the employees of the department specially established for fund custody under the fund custodian.

The provisions of Articles 16 and 17 of this Law shall be applicable to the manager and other senior managers of the specially established fund custody department under the fund custodian.

Article 28 The fund custodian and the fund manager shall not be served by the same entity and they shall not make capital contribution to each other or hold each other's shares.

Article 29 A fund custodian shall perform the following duties:

- (1) keeping safe custody of fund assets;
- (2) establishing capital accounts and securities accounts for fund assets in accordance with relevant regulations;
- (3) establishing separate accounts for the assets of different funds under its custody to ensure integrity and independence of the fund assets;
- (4) maintaining records, account books, statements and other related materials concerning the business of fund custody;
- (5) handling clearance and settlement matters without delay in accordance with the provisions in the fund contract and the investment instructions of the fund manager;
- (6) handling matters of disclosure of information in relation to the business of fund custody;



- (7) presenting comments and suggestions on financial and accounting reports of the fund and interim and annual reports of the fund;
- (8) verifying and reviewing the net value of fund assets and the subscription and redemption prices of the fund units calculated by the fund manager;
- (9) convening general meetings of the holders of fund units in accordance with relevant regulations;
- (10) supervising the investment operation of the fund manager in accordance with relevant regulations; and
- (11) other duties prescribed by the securities regulatory authority under the State Council.

Article 30 Where a fund custodian discovers that the investment instructions given by a fund manager contravene laws, administrative regulations or other relevant regulations or the provisions in the fund contract, it shall refuse to carry them out, immediately notify the fund manager of the matter and report to the securities regulatory authority under the State Council without delay.

Where a fund custodian discovers that the investment instructions given by a fund manager, which are already effective according to the procedures of trading, contravene laws, administrative regulations or other relevant regulations or the provisions in the fund contract, it shall immediately notify the fund manager of the fact and report to the securities regulatory authority under the State Council without delay.

Article 31 The provisions of Article 20 of this Law shall be applicable to fund custodians.

Article 32 The securities regulatory authority under the State Council and the banking regulatory authority under the State Council shall, on the strength of their functions and powers, instruct the fund custodian to make rectification or disqualify it for fund custody if:

- (1) it grossly violates any law or regulation;
- (2) it ceases to meet the requirements prescribed by Article 26 of this Law; or
- (3) it is found in other circumstances as prescribed by relevant laws and administrative regulations.

Article 33 The duties of a fund custodian shall be terminated if:

- (1) it is disqualified for fund custody according to law;
- (2) it is discharged by the holders of fund units at a general meeting;
- (3) it closes down according to law or is dissolved or declared bankrupt according to law; or
- (4) it is found in other circumstances as prescribed by the fund contract.

Article 34 Where the duties of a fund custodian is terminated, a new fund custodian shall, within six months, be selected and appointed by the holders of fund units at a general meeting; and

before a new fund custodian is selected, the securities regulatory authority under the State Council shall appoint a provisional fund custodian.

Where the duties of a fund custodian is terminated, the fund custodian shall properly keep the fund assets and materials regarding fund custody and shall complete the procedures for the transfer of the fund assets and fund custody without delay, and the new or provisional fund custodian shall likewise take over the fund assets and fund custody.

Article 35 Where the duties of a fund custodian is terminated, a public accounting firm shall, in accordance with relevant regulations, be appointed to audit the fund assets, and the audit results shall be announced and, at the same time, submitted to the securities regulatory authority under the State Council for the record.

## Chapter IV Raising of Capital

Article 36 To sell fund units for capital raising in accordance with this Law, a fund manager shall submit the following documents to the securities regulatory authority under the State Council and shall be subject to approval by the said authority:

- (1) an application report;
- (2) a draft fund contract;
- (3) a draft fund custodian agreement;
- (4) a draft prospectus;
- (5) documents certifying the qualifications of the fund manager and the fund custodian;
- (6) the financial and accounting reports of the fund manager and the fund custodian for the three preceding years or for the period since their establishment, which have been audited by a public accounting firm;
- (7) the legal opinion produced by a law firm; and
- (8) other documents prescribed by the securities regulatory authority under the State Council.

Article 37 A fund contract shall include the following information:

- (1) the purpose and name of the fund for which capital is to be raised;
- (2) the names and addresses of the fund manager and the fund custodian;
- (3) the mode of operation of the fund;
- (4) the total sum of the units of a closed-end fund and the term of the fund contract, or the minimum amount of capital to be raised for an open-end fund;

- (5) the principles for determining the date of sale and the price of the fund units and the fees;
- (6) the rights and obligations of the holders of fund units, the fund manager and the fund custodian;
- (7) the procedures and rules for the convening of general meetings of the holders of fund units, for discussion of business and for voting;
- (8) the procedures, time and place of the sale, trading, subscription and redemption of fund units, the ways for calculation of fees, and the time and ways for payment of redemption monies;
- (9) the principles for distribution of fund returns and the means of implementation;
- (10) the charging of management fees and custodian fees by the fund manager and the fund custodian as their remuneration and the means of payment and the percentage of such fees;
- (11) the charging of other fees relating to the management and use of the fund assets and the means of payment of such fees;
- (12) the objectives of investment with the fund assets and restrictions on such investment;
- (13) the ways for calculation of the net value of the fund assets and for announcement of the net value;
- (14) the ways for resolution of the situation where the capital raised fails to reach the statutory amount;
- (15) circumstances giving rise to the revocation and termination of the fund contract and the procedures for the revocation and termination, and the ways for liquidation of fund assets;
- (16) mechanism for resolution of disputes; and
- (17) other matters agreed upon by the parties.

Article 38 The prospectus of a fund shall include the following information:

- (1) the name of the document approving the application for capital raising and the date of approval;
- (2) basic facts of the fund manager and the fund custodian;
- (3) a summary of the contents of the fund contract and of the fund custodian agreement;
- (4) the date, the price, the fees and the period for the sale of fund units;
- (5) the mode of sale of fund units and the names of the institutions which sell the fund units and of the registration authority;
- (6) the names and addresses of the law firm which produces the legal opinion and the public accounting firm which audits the fund assets;

(7) the charging of remuneration and other related fees by the fund manager and the fund custodian, and the means of payment and the percentage of such remuneration and fees;

(8) risk warning statements; and

(9) other information specified by the securities regulatory authority of the State Council.

Article 39 The securities regulatory authority under the State Council shall, within six months from the date it accepts an application for capital raising, examine the application in accordance with relevant laws and administrative regulations and the regulations prescribed by the securities regulatory authority under the State Council as well as the principle of prudent regulation, and decide whether to approve or disapprove the application and notify the applicant of its decision accordingly; and if it disapproves the application, it shall explain the reasons why.

Article 40 The units of a fund may only be sold after the application for capital raising has been approved.

Article 41 The fund manager shall be responsible for the sale of fund units; and it may entrust another institution approved by the securities regulatory authority under the State Council to sell the same on its behalf.

Article 42 The fund manager shall arrange for the prospectus, the fund contract and other relevant documents to be published three days prior to the sale of the fund units.

The documents specified in the preceding paragraph shall be truthful, accurate and complete.

The promotion in connection with the capital raising shall be conducted in compliance with relevant laws and administrative regulations, and no acts specified in Article 64 of this Law shall be committed.

Article 43 The fund manager shall, within six months from the date it receives the approval document, raise capital. If it begins to do so after the elapse of the six-month period and there is no substantive change in the matters that have been approved, it shall report the fact to the securities regulatory authority under the State Council for the record. If there are substantive changes, it shall submit a new application to the securities regulatory authority under the State Council.

Capital raising shall not exceed the period approved by the securities regulatory authority under the State Council. The period for the raising of capital of a fund shall be counted from the date the fund units begin to be sold.

Article 44 If, at the expiration of the period for capital raising, the total sum of the fund units sold for a closed-end fund is more than 80 percent of the approved amount of the fund or the total sum of the fund units sold for an open-end fund exceeds the minimum amount of the capital approved to be raised, and in each case the number of holders of the fund units tallies with the number specified by the securities regulatory authority under the State Council, the fund manager shall, within 10 days from the date the period for the capital raising expires, appoint a statutory capital verification institution to verify the capital raised and, within 10 days from the date it receives the report on capital verification, it shall submit the report to the securities regulatory authority under

the State Council, complete the procedures for registration of the fund and make an announcement thereof.

Article 45 The capital raised during the period of capital raising shall be deposited into a special account, and before completion of capital raising, no person may make use of the capital.

Article 46 A fund contract shall be established upon the payment of the subscription monies for the fund units by investors; the fund contract shall become effective once the fund manager, in accordance with the provisions of Article 44 of this Law, completes the procedures for registration of the fund with the securities regulatory authority under the State Council.

Where, at the expiration of the period for capital raising, the fund manager fails to fulfill the requirements specified in Article 44 of this Law, it shall bear the following responsibilities:

- (1) to repay, with its own assets, the liabilities and expenses incurred in capital raising; and
- (2) to refund, within 30 days after the expiration of the period for capital raising, the subscription monies already paid by investors, plus the interest on bank deposit for the same period.

## Chapter V Trading of Fund Units

Article 47 The units of a closed-end fund may be listed for trading on a stock exchange after the fund manager submits an application and obtains approval by the securities regulatory authority under the State Council.

The securities regulatory authority under the State Council may authorise a stock exchange to approve, in accordance with the statutory conditions and procedures, the listing of fund units for exchange on the stock exchange.

Article 48 The fund units to be listed shall satisfy the following conditions:

- (1) the capital is raised in compliance with the provisions of this Law;
- (2) the term of the fund contract is more than five years;
- (3) the minimum amount of capital raised is not less than 200 million yuan;
- (4) the number of holders of fund units is not less than 1,000; and
- (5) other conditions prescribed by the rules for listing of fund units for trading.

Article 49 The rules for listing of fund units shall be formulated by the stock exchange and submitted to the securities regulatory authority under the State Council for approval.

Article 50 Under any of the following circumstances after the listing of the fund units, a stock exchange shall terminate the listing of the fund units and report such termination to the securities regulatory authority under the State Council for the record:

- (1) the conditions for listing prescribed in Article 48 of this Law are no longer satisfied;
- (2) the term of the fund contract expires;
- (3) a general meeting of the holders of fund units decides to terminate the listing of the fund units ahead of schedule; and
- (4) other circumstances giving rise to termination of the listing of fund units as prescribed by the fund contract or by the rules for listing of fund units.

## Chapter VI Subscription and Redemption of Fund Units

Article 51 The fund manager of an open-end fund shall be responsible for the subscription and redemption and registration of the units of the fund; and it may entrust such matters to another institution approved by the securities regulatory authority under the State Council.

Article 52 Except otherwise provided for by the fund contract, the fund manager shall handle the business of subscription and redemption of fund units on every working day.

Article 53 Except for the following circumstances, the fund manager shall pay redemption monies on a timely basis:

- (1) it is unable to pay the redemption monies due to force majeure;
- (2) a stock exchange has, in accordance with law, decided to suspend trading on a temporary basis, and as a result the fund manager is unable to calculate the net value of the fund assets on that very day; and
- (3) other special circumstances prescribed in the fund contract.

The fund manager shall, on the very day any of the circumstances mentioned above occurs, report the matter to the securities regulatory authority under the State Council for the record.

When any of the circumstances specified in the first paragraph of this Article ceases to exist, the fund manager shall promptly pay the redemption monies.

Article 54 For an open-end fund, a sufficient amount of cash or government bonds shall be maintained in order to make payment of redemption monies to the holders of fund units. The specific percentage of the fund assets to be held in cash or government bonds shall be prescribed by the securities regulatory authority under the State Council.

Article 55 The subscription price and the redemption price of a fund unit shall be calculated on the basis of the net value of the fund unit on the day of subscription or redemption plus or minus relevant charges.

Article 56 Where there is an error in the calculation of the net value of a fund unit, the fund manager shall rectify the error immediately and take reasonable measures to prevent the incurring of further losses. If the error in the price calculation amounts to 0.5 percent of the net value of the fund unit, the fund manager shall make an announcement of the fact and report the same to the securities regulatory authority under the State Council for the record.

Where the holders of fund units sustain losses as a result of an error in the calculation of the net value of the fund unit, they shall have the right to claim compensation from the fund manager and the fund custodian.

## Chapter VII Operation of Funds and Disclosure of Information

Article 57 A fund manager that invests in securities with fund assets shall do so in the form of a portfolio.

The specific form and the investment percentages of a portfolio shall be prescribed in the fund contract in accordance with this Law and the regulations of the securities regulatory authority under the State Council.

Article 58 Fund assets shall be used for investment in the following:

- (1) listed stocks and bonds; and
- (2) other types of securities prescribed by the securities regulatory authority under the State Council.

Article 59 The assets of a fund shall not be used for the following investments or activities:

- (1) securities underwriting;
- (2) provision of loans or security to another person;
- (3) engaging in investments which may give rise to unlimited liability;
- (4) dealing in the units of other funds, except otherwise prescribed by the State Council;
- (5) making capital contributions to the fund manager or the fund custodian or dealing in the shares or bonds which are issued by the fund manager or the fund custodian;
- (6) dealing in the securities issued by a shareholder which has a controlling shareholding relationship with the fund manager or the fund custodian, the securities issued by a company which has other vital connection with the fund manager or the fund custodian, or the securities underwritten by such shareholder or company during the underwriting period;
- (7) engaging in insider trading, manipulation of securities prices or other illegitimate securities trading activities; or

(8) other activities prohibited by the securities regulatory authority under the State Council pursuant to the provisions of relevant laws and administrative regulations.

Article 60 The fund manager, the fund custodian and other persons who have the obligation to disclose information relating to a fund shall disclose such information according to law, and shall ensure the truthfulness, accuracy and completeness of such information.

Article 61 Those who are under the obligation to disclose information relating to a fund shall ensure that the disclosure of such information which is required to be disclosed is made within the period specified by the securities regulatory authority under the State Council and shall ensure that investors may check or make copies of the publicly disclosed information at such time and in such manner as prescribed in the fund contract.

Article 62 Information concerning a fund to be publicly disclosed shall include:

- (1) the prospectus, the fund contract and the custodian agreement of the fund;
- (2) the status of capital raising;
- (3) the announcement in respect of the listing of the fund units;
- (4) the net value of the fund assets and the net value of a fund unit;
- (5) the subscription price and the redemption price of the fund units;
- (6) quarterly portfolio reports of the fund assets, financial and accounting reports of the fund, and the interim and annual reports of the fund;
- (7) provisional reports;
- (8) resolutions adopted at the general meetings of the holders of fund units;
- (9) major changes of personnel of the fund manager and the fund custodian department of the fund custodian;
- (10) legal actions involving the fund manager, the fund assets or the business of fund custody; and
- (11) other information which is required to be disclosed as prescribed by the securities regulatory authority under the State Council pursuant to the provisions of relevant laws and administrative regulations.

Article 63 The public accounting firm that produces an audit report, and the law firm that produces a legal opinion, in respect of the publicly disclosed information concerning a fund shall ensure the truthfulness, accuracy and completeness of the contents of the documents they produce.

Article 64 The following acts in connection with any public disclosure of information concerning a fund shall be prohibited:

- (1) making false records, misleading statements, or grave omissions;
- (2) making forecast of the performance of securities investment;



- (3) guaranteeing to make profits or bear losses in breach of relevant regulations;
- (4) defaming other fund managers, fund custodians or institutions selling fund units; and
- (5) other acts prohibited by the securities regulatory authority under the State Council pursuant to the provisions of relevant laws and administrative regulations.

## Chapter VIII Modification and Termination of a Fund Contract and Liquidation of Fund Assets

Article 65 The mode of operation of a fund may be changed pursuant to the provisions of the fund contract or the resolution adopted at a general meeting of the holders of fund units and with the approval of the securities regulatory authority under the State Council.

Article 66 A closed-end fund may expand its fund size or extend the term of its fund contract provided that the following requirements are met and approval by the securities regulatory authority under the State Council is obtained:

- (1) the fund has good performance;
- (2) no administrative or criminal penalty has been imposed on the fund manager for a breach of any law or regulation in the two preceding years;
- (3) a resolution to such an effect is adopted at a general meeting of the holders of fund units; and
- (4) other requirements prescribed by this Law.

Article 67 A fund contract shall be terminated in any of the following circumstances:

- (1) the term of the fund contract expires and is not extended;
- (2) the termination is decided on at a general meeting of the holders of fund units;
- (3) the duties of the fund manager and the fund custodian are terminated and are not assumed by a new fund manager or a new fund custodian within six months; and
- (4) other circumstances prescribed in the fund contract.

Article 68 Upon termination of a fund contract, the fund manager shall have a liquidation team formed to liquidate the fund assets.

The liquidation team shall be composed of the fund manager, the fund custodian and related intermediary agencies.

After the liquidation report prepared by the liquidation team is audited by a public accounting firm and a legal opinion on the liquidation report is produced by a law firm, the report shall be submitted to the securities regulatory authority under the State Council for the record and shall be made known to the public.

Article 69 The fund assets remaining after completion of the liquidation shall be distributed among the holders of fund units in proportion to the number of fund units they hold respectively.

## Chapter IX Rights of the Holders of Fund Units and Exercise of the Rights

Article 70 Holders of fund units shall have the following rights:

- (1) to share returns from the fund assets;
- (2) to receive distribution of the fund assets remaining after completion of liquidation;
- (3) to transfer fund units or apply for redemption of fund units according to law;
- (4) to request, in accordance with relevant regulations, the convening of a general meeting of the holders of fund units;
- (5) to exercise the right to vote in respect of matters submitted to the general meeting of the holders of fund units for approval;
- (6) to check or make copies of publicly disclosed information concerning the fund;
- (7) in accordance with the law, to bring an action against any infringement of their legitimate rights and interests by any fund manager, any fund custodian or any institution selling fund units; and
- (8) other rights prescribed in the fund contract.

Article 71 The following matters shall be submitted for approval and decision by a general meeting of the holders of fund units:

- (1) termination of the fund contract ahead of schedule;
- (2) expansion of the size of the fund or extension of the term of the fund contract;
- (3) change of the mode of operation of the fund;
- (4) increase of remuneration to the fund manager and the fund custodian;
- (5) change of the fund manager and the fund custodian; and
- (6) other matters prescribed in the fund contract.

Article 72 A general meeting of the holders of fund units shall be convened by the fund manager. In the event that the fund manager fails to convene the general meeting according to relevant regulations or is unable to convene the meeting, the fund custodian shall convene the meeting.

In the event that the holders representing more than 10 percent of the fund units request the convening of a general meeting of the holders of fund units in respect of the same matter, and that

the fund manager and the fund custodian fail to convene the meeting, the holders representing more than 10 percent of the fund units shall have the right to proceed to convene the meeting on their own and shall submit the matter to the securities regulatory authority under the State Council for the record.

Article 73 To convene a general meeting of the holders of fund units, the convener shall, at least 30 days ahead of the meeting, announce the time and the form of the meeting, the matters to be deliberated, the procedure of discussion, the voting formula, etc.

A general meeting of the holders of fund units shall not put to the vote any matter which is not covered in the announcement.

Article 74 A general meeting of the holders of fund units may be held on the spot, through communication, or by other means.

Each fund unit carries one vote. A holder of fund units may entrust a proxy to attend a general meeting of the holders of fund units and exercise his right to vote thereat.

Article 75 No meeting of the holders of fund units shall be convened unless holders representing at least 50 percent of the fund units are present at the meeting, and decisions on matters under deliberation at the meeting shall be adopted only by the holders of fund units with more than 50 percent of the right to vote who are present at the meeting; but a change of the mode of operation of the fund, a change of the fund manager or the fund custodian and termination of the fund contract ahead of schedule shall be subject to approval by the holders of fund units with more than two-thirds of the right to vote who are present at the meeting.

Matters decided on at a general meeting of the holders of fund units shall, in accordance with law, be submitted to the securities regulatory authority under the State Council for approval or for the record, and shall be made known to the public.

## Chapter X Supervision and Regulation

Article 76 The securities regulatory authority under the State Council shall perform the following duties in accordance with law:

- (1) in accordance with law, formulating rules and regulations relating to supervision and regulation of the activities in respect of investment of funds in securities and exercising the power of approval or verification;
- (2) handling registration of funds;
- (3) supervising and regulating the activities carried out by fund managers, fund custodians and other institutions in investing funds in securities, and investigating, and imposing penalties on, violations of law and making the violations known to the public;

- (4) formulating professional qualifications and code of conduct for fund employees and supervising the implementation thereof;
- (5) supervising and inspecting disclosure of fund-related information;
- (6) providing guidance to and supervising the activities of fund industry associations; and
- (7) other duties prescribed by laws and administrative regulations.

Article 77 When performing its duties in accordance with law, the securities regulatory authority under the State Council shall have the power to take the following measures:

- (1) entering the premises where illegal activities take place in order to conduct investigation and collect evidence;
- (2) questioning the parties concerned and the entities and individuals who are involved in the matter under investigation, and requiring them to provide explanations in respect of the matter under investigation;
- (3) checking and making copies of the records of securities transactions, records of securities registrations and transfers, financial and accounting information and other related documents and information of the parties concerned and the entities and individuals that are involved in the matter under investigation, and sealing up the documents and information which are likely to be transferred or concealed;
- (4) checking the capital accounts, securities accounts or fund accounts of the parties concerned and the entities and individuals that are involved in the matter under investigation, and where there is evidence to show signs of transfer or concealment of illegal funds and securities, applying to a judicial organ for the freezing of the accounts in question; and
- (5) taking other measures prescribed by laws and administrative regulations.

Article 78 When carrying out their duties of investigation or inspection in accordance with law, no less than two staff members of the securities regulatory authority under the State Council shall be present, and they shall produce their legal identification documents and shall keep confidential the commercial secrets which they come to know during the course of investigation or inspection.

Article 79 Staff members of the securities regulatory authority under the State Council shall be devoted to their duties, carry out their work in accordance with law, be fair and honest, and subject themselves to supervision, and they shall not take advantage of their positions to seek personal gain.

Article 80 When staff members of the securities regulatory authority under the State Council perform their duties in accordance with law, the entities and individuals under investigation and inspection shall co-operate with them, and shall truthfully provide relevant documents and information, and they shall not refuse to co-operate with them, hinder them in their work, or conceal documents and information.

Article 81 When staff member of the securities regulatory authority under the State Council, while performing their duties, discover any illegal conduct and suspect it as a crime, they shall transfer the case to a judicial organ for handling.

Article 82 Staff members of the securities regulatory authority under the State Council shall not concurrently hold any position in any institution under supervision and regulation of the authority.

## Chapter XI Legal Responsibility

Article 83 Where, in the course of performing their respective duties, the fund managers or fund custodians violate any provision of this Law or any provision in the fund contracts, thus causing losses to the fund assets or the holders of fund units, they shall bear their respective responsibilities for their own acts and pay compensation in accordance with law; and where losses are caused to the fund assets or the holders of fund units as a result of the joint acts of the fund managers and the fund custodians, they shall bear joint and several responsibility to pay compensation.

Article 84 Anyone who, in violation of the provisions of Article 45 of this Law, makes use of the capital raised shall be instructed to return the money and his unlawful gains shall be confiscated; if such gains exceed 500,000 yuan, he shall, in addition, be fined not less than the amount of such gains but not more than five times such gains; and if there are no unlawful gains or such gains are less than 500,000 yuan, he shall, in addition, be fined not less than 50,000 yuan but not more than 500,000 yuan. The persons who are directly in charge and the other persons who are directly responsible shall be given a disciplinary warning and shall, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan. Where losses are caused to the investors, he shall, in accordance with law, bear the responsibility to pay compensation. If the violation constitutes a crime, he shall be investigated for criminal responsibility in accordance with law.

Article 85 Anyone who, without approval by the securities regulatory authority under the State Council, raises capital shall be instructed to stop capital raising and return all the money, plus interest calculated at the bank deposit rate for the corresponding period; and his unlawful gains shall be confiscated, and he shall, in addition, be fined not less than one percent but not more than five percent of the amount of the capital raised. If the violation constitutes a crime, he shall be investigated for criminal responsibility in accordance with law.

Article 86 Where a fund management company is established in violation of the provisions of this Law and without approval, it shall be banned by the securities regulatory authority and shall, in addition, be fined not less than 50,000 yuan but not more than 500,000 yuan. If the violation constitutes a crime, criminal responsibility shall be investigated in accordance with law.

Article 87 Where an entity, without approval of the securities regulatory authority under the State Council, engages in the business of fund management or the business of fund custody, it shall be instructed to cease such business and its unlawful gains shall be confiscated; if such gains exceed

one million yuan, it shall, in addition, be fined not less than the amount of the unlawful gains but not more than five times the amount of such gains; and if there are no unlawful gains or such gains are less than one million yuan, it shall, in addition, be fined not less than 100,000 yuan but not more than one million yuan. Where losses are caused to the fund assets or to the holders of fund units, it shall, in accordance with law, bear the responsibility to pay compensation. The person who are directly in charge and the other persons who are directly responsible shall be given a disciplinary warning and shall, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan. If a crime is constituted, criminal responsibility shall be investigated in accordance with law.

Article 88 Where a fund manager or a fund custodian, in violation of the provisions of this Law, fails to place the assets of a fund under separate management or custody in separate accounts or misappropriates the fund assets, it shall be instructed to rectify and shall be fined not less than 50,000 yuan but not more than 500,000 yuan. Where losses are caused to the fund assets or to the holders of fund units, it shall, in accordance with law, bear the responsibility to pay compensation. The persons who are directly in charge and other persons who are directly responsible shall be given a discipline warning, or be suspended or disqualified from engaging in the fund business and, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan. If the violation constitutes a crime, it shall be investigated for criminal responsibility in accordance with law.

The asset and returns derived by the fund manager or the fund custodian from its misappropriation of the fund assets shall be included in the assets of the fund, except where otherwise provided for by laws and administrative regulations.

Article 89 Where a fund manager or a fund custodian engages in any of the activities specified in Article 20 of this Law, it shall be instructed to rectify and its unlawful gains shall be confiscated. If the unlawful gains exceeds one million yuan, it shall, in addition, be fined not less than the amount of the unlawful gains but not more than five times the amount of such gains; and if there are no unlawful gains or such gains are less than one million yuan, it shall, in addition, be fined not less than 100,000 yuan but not more than one million yuan. Where losses are caused to the assets of a fund or to the holders of fund units, it shall, in accordance with law, bear the responsibility to pay compensation. The persons who are directly in charge and the other persons who are directly responsible shall be given a disciplinary warning, or be suspended or disqualified from engaging in the fund business and, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan. If the violation constitutes a crime, criminal responsibility shall be investigated in accordance with law.

Article 90 Where a fund manager or a fund custodian engages in any of the activities specified in Subparagraphs 1, 2, 3, 4, 5, 6 and 8 of Article 59 of this Law, it shall be instructed to rectify and shall be fined not less than 100,000 yuan but not more than one million yuan. Where losses are caused to the fund assets or to the holders of fund units, it shall, in accordance with law, bear the responsibility to pay compensation. The persons who are directly in charge and the other persons who are directly responsible shall be given a disciplinary warning, or be suspended or disqualified from engaging in the fund business and, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan. If the violation constitutes a crime, criminal responsibility shall be investigated in accordance with law.

The assets and returns derived by the fund manager or the fund custodian from the use of fund assets for any of the activities mentioned in the preceding paragraph shall be included in the fund assets, except where otherwise provided for by laws and administrative regulations.

Article 91 Where a fund manager or a fund custodian engages in any of the activities specified in Subparagraph 7 of Article 59 of this Law, the persons who are directly in charge and the other persons who are directly responsible shall, in addition to the penalties prescribed in the relevant provisions of the Securities Law of the People's Republic of China, be given a disciplinary warning, or be suspended or disqualified from engaging in the fund business and, at the same time, be fined not less than 30,000 yuan but not more than 300,000 yuan. Where losses are caused to the fund assets or to the holders of fund units, it shall, in accordance with law, bear the responsibility to pay compensation.

Article 92 Where a fund manager and a fund custodian, in violation of the provisions of this Law, make capital contributions to each other or hold each other's shares, they shall be instructed to rectify and may be fined not more than 100,000 yuan.

Article 93 Where persons who have the obligation to disclose information concerning a fund fail to disclose such information in accordance with law or the information disclosed contains false accounts, misleading statements or grave omissions, they shall be instructed to rectify; and their unlawful gains shall be confiscated and they shall, in addition, be fined not less than 100,000 yuan but not more than one million yuan. Where losses are caused to the holders of fund units, they shall, in accordance with law, bear the responsibility to pay compensation. The persons who are directly in charge and the other persons who are directly responsible shall be given a disciplinary warning, or be suspended or disqualified from engaging in the fund business and, in addition, be fined not less than 30,000 yuan but not more than 300,000 yuan. If the violation constitutes a crime, criminal responsibility shall be investigated in accordance with law.

Article 94 Where a professional institution that produces an auditor's report, a legal opinion or other documents in respect of information concerning a fund that is publicly disclosed by persons who have the obligation to disclose such information makes fraudulent statements in respect of the matters for which it is responsible, it shall be instructed to rectify, its unlawful gains shall be confiscated, and it shall, in addition, be fined not less than the amount of the unlawful gains but not more than five times that amount. If the circumstances are serious, it shall be instructed to close down and the relevant professional qualifications of the persons who are directly responsible shall be suspended or rescinded. Where losses are caused to the holders of fund units, it shall, in accordance with law, bear the responsibility to pay compensation. If a crime is constituted, it shall be investigated for criminal responsibility in accordance with law.

Article 95 Where a fund manager or a fund custodian fails to convene a general meeting of the holders of fund units in accordance with relevant regulations, it shall be instructed to rectify and it may be fined not more than 50,000 yuan. The persons who are directly in charge and the other persons who are directly responsible shall be given a disciplinary warning, or be suspended or disqualified from engaging in the fund business.

Article 96 Where a fund manager or a fund custodian violates the provisions of this Law, if the circumstances are serious, it shall be disqualified from engaging in the business of fund management or fund custody.

Article 97 Where an employee of a fund manager or the special fund custodian department of a fund custodian violates the provisions of Article 18 of this Law and losses are thus caused to the fund assets or to the holders of fund units, he shall, in accordance with law, bear the responsibility to pay compensation; and if the circumstances are serious, he shall be disqualified from engaging in the fund business. If the violation constitutes a crime, he shall be investigated for criminal responsibility in accordance with law.

Article 98 Where a staff member of the securities regulatory authority neglects his duty, abuses his power, or engages in irregularities for personal gains, or seek or receive money or things of value from another person by taking advantage of his position, he shall be given an administrative sanction in accordance with law. If a crime is constituted, he shall be investigated for criminal responsibility in accordance with law.

Article 99 If a person, for his violation of the provisions of this Law, is liable to bear the responsibility to pay civil compensation and to pay fines and penalties and if his assets are not sufficient to pay all at the same time, he shall bear the responsibility to pay civil compensation first.

Article 100 If, in accordance with the provisions of this Law, a fund manager or a fund custodian bears the responsibility to pay civil compensation and pay fines and penalties, it shall use its own assets to discharge such responsibility.

All the fines and penalties collected and all the unlawful gains confiscated pursuant to Law shall be turned over to the State Treasury.

## Chapter XII Supplementary Provisions

Article 101 Specific regulations governing the securities investment activities engaged in by fund management companies or other institutions approved by the State Council to gather capital through private placements or accept property entrustment from specific entities shall separately be formulated by the State Council on the basis of the principles laid down in this Law.

Article 102 Regulations governing the establishment of a securities investment company to engage in securities investment and other related activities by raising capital through public offering of shares shall separately be formulated by the State Council.

Article 103 This Law shall go into effect as of June 1, 2004.



